Supreme Court, U.S.
FILED
AUG 2 1 1993

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1993

PATRICK R. VEREB,
PETITIONER,

V.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR
WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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NOTE:

ALL AVAILABLE INFORMATION FOR THIS DOCUMENT HAS BEEN FILMED.

QUESTIONS PRESENTED

Does the district court's failure to make specific independent findings at sentencing regarding each essential element of the crime of perjury for which the court enhanced Petitioner's sentence by two levels pursuant to U.S.S.G. §3C1.1 require a remand for proceedings consistent with United States v. Dunningan, _____ U.S. _____, 113 S. Ct. 1111 (1993)?

Does the court of appeals' summary affirmance and disregard of its own precedent call for an exercise of this Court's supervisory powers where repeated prosecutorial references to uncharged misconduct prejudiced Petitioner and deprived him of fundamental fairness?

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AND NOW, comes Petitioner, Patrick R. Vereb, through his counsel, Caroline M. Roberto, Esquire, who respectfully prays that a Writ of Certiorari issue to review the judgment order of the United States Court of Appeals for the Third Circuit affirming the Judgment of Conviction and the Sentence of the District Court for the Western District of Pennsylvania.

OPINIONS AND ORDERS BELOW

The unpublished Order Sur Petition for Rehearing, denying rehearing by a panel of the United States Court of Appeals for the Third Circuit, is attached as Appendix A to this Petition. The unpublished Judgment Order of that court affirming

the District Court for the Western District of Pennsylvania is attached as Appendix B.

The fact findings and conclusions of law relevant to the sentencing determination are set forth in Appendix C, which consists of pertinent portions of the sentencing transcript. The Opinion of the Chief Judge of the Western District of Pennsylvania denying post-trial motions is attached as Appendix D.

STATEMENT OF JURISDICTION

The Court of Appeals issued its Judgment Order in this case on April 16, 1993. (Appendix A). A timely petition for rehearing was filed and denied by the Court of Appeals on May 12, 1993. (Appendix B). Petitioner files this Petition for a writ of certiorari from the denial of rehearing, pursuant to Supreme Court Rule 13.4. This Court's jurisdiction is invoked under Title 28, U.S.C. §1254 (1) which confers jurisdiction to review by writ of certiorari all final decisions of the United States Courts of Appeal.

The district court had jurisdiction over the criminal prosecution by virtue of Title 18, U.S.C. §3742 and Title 28, U.S.C. §1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

None; however, Section 3C1.1 of the United States Sentencing Guidelines is involved, U.S.S.G. §3C1.1, and is set forth in Appendix E.

STATEMENT OF THE CASE

On December 30, 1991, Patrick R. Vereb was arrested and charged in a sixty-four (64) count Indictment with five (5) counts of mail fraud (Counts 1-5) and fifty-nine (59) counts of Medicare fraud. The Medicare fraud counts alleged either that Petitioner billed for but did not supply oxygen (Counts 8, 9, 13, 15, 16, 17, 19, 20, 21, 23, 24, 25) or that he reported but did not use a stretcher (remaining counts). He pled not guilty. The Government moved for dismissal of twenty-two (22 counts pretrial.

On May 26, 1992, jury trial commenced in the United States District Court for the Western District of Pennsylvania before the Honorable Gustave Diamond. Jury deliberation began on Monday, June 8, 1992 and a verdict was rendered on Thursday, June 11, 1992. The jury found Petitioner guilty on twenty-three (23) counts and remained "undecided" on eighteen (18) counts.

On August 14, 1992, a sentencing hearing was conducted at which Judge Diamond sentenced Mr. Vereb to a term of imprisonment of thirty (30 months. A notice of Appeal to the United States Court of Appeals for the Third Circuit was filed on August 14, 1992, which, on April 16, 1993, affirmed the judgment of the district court by a two-page judgment order. (Appendix B).

On May 12, 1993, the court of appeals denied Petitioner's petition for rehearing. (Appendix A).

In 1989, Petitioner owned and operated Vereb Funeral Home and the Vereb Ambulance Service doing business in the tri-county area of Butler, Beaver, and Lawrence Counties, Pennsylvania. Petitioner began his ambulance service in 1980 and in the spring of that same year, he applied for and received acceptance into the Medicare reimbursement program. During the relevant nine (9) year time frame, Vereb Ambulance Service was headquartered in New Castle, Pennsylvania.

On December 14, 1989, Petitioner received notice of an investigation by the United States Department of Health and Human Services. All Medicare reimbursements were discontinued during the pendency of the investigation. The Government began issuing subpoenas for Vereb Ambulance documents in March, 1990 and retained the documents through the trial. On December 30, 1991, an indictment was returned against Petitioner individually and doing business as Vereb Ambulance Service charging him with five (5) counts of mail fraud, in violation of 18 U.S.C. §§1341 and 1342, and fifty-nine (59) counts of Medicare fraud, in violation of 18 U.S.C. §§287 and 2.

Evidence concerning the internal billing procedure at Vereb Ambulance Service was essential proof to both parties in the case.

Testimony was presented that trip sheets were used by each ambulance crew when they went out on a call. The crews were instructed to write the patient's background information on each trip sheet and to complete the portion of the trip sheet entitled

"Findings". "Findings" would include the patient's condition and what type of services were performed during the trip. Crews were also to note if any aids were given, such as oxygen, or whether a stretcher was used.

At trial, the Government introduced evidence to show that Petitioner billed Medicare for always having used a stretcher and an ambulance to transport dialysis patient Virginia Miller for treatment. The billing procedures regarding Ms. Miller's transportation were the factual predicate upon which Counts 26 and 28 were grounded. In his defense, Petitioner denied knowing that Ms. Miller was not in fact transported by a stretcher for dialysis treatment, and at sentencing he disputed whether Patricia Shoaf could have observed Ms. Miller drive-by Petitioner's office in the jump seat instead of a stretcher. App. at F17.

At sentencing, the Government sought and was granted a two-level sentence enhancement for perjury, based solely on the trial court's factual findings at the sentencing hearing. App. at C22. The Government argued that Petitioner's perjury consisted of his insistence, under oath at trial, that he always used a stretcher and ambulance to transport patient Virginia Miller, who was the subject of Counts 26 and 28 of the Indictment. Since he was convicted of both counts, the Government contended that the jury did not believe him and that he, therefore, committed perjury. The Government also based its argument upon the fact that its two

rebuttal witnesses both testified that Petitioner instructed them on many occasions to take Virginia Miller to dialysis by wheelchair van or car rather than ambulance. App. at C5. The district court focused only upon the Miller testimony in making its enhancement finding, and rejected the Government's obstruction of justice theory. App. C.

Government witnesses Deborah Copper and Patricia Shoaf had both testified in the Government's case-in-chief. Copper had already testified that, regarding Count 26, she did not use a stretcher on Virginia Miller. After her initial testimony on May 27, 1992, Copper remained in the courtroom until she was called in rebuttal on June 4, 1992. Additionally, Government witness Richard LaVan testified in its case-in-chief that he drove patients to dialysis in his car many times. Miller, of course, was a dialysis patient. LaVan did not testify on rebuttal. The testimony that Virginia Miller was transported by a method other than an ambulance/stretcher was indisputably part of the Government's case-in-chief.

Petitioner simply denied these allegations on the witness stand. The Government did not contend at sentencing that he did more. The trial court found by a preponderance of the evidence that Petitioner made statements on the stand in his own defense which were "untruthful". App. at C21. The court additionally found that with the two-point increase, the Guidelines range increased from 24 to 30 months to 30 to 37 months. However, the trial court made clear that its inclination was "to be very, very circumspect about

charging or penalizing a defendant who elects to take the stand in his own defense". App. at C21. Again, upon finding the two-point increase the district court stated: "So the Court will make that finding, though I must say somewhat reluctantly:. App. at C22.

The Government elicited testimony from defense witness Pearl Daytner regarding a trip sheet for patient Neurissa Kahn. Kahn was dead on arrival at the hospital, and the trip sheet noted that rigor mortis had set in and that there was pooling of the blood. The trip sheet was marked and admitted into evidence. App. at F5, F12. The Government used the trip sheet and the corresponding claim form, which was also marked as evidence, to extensively cross examine Petitioner. App. at F5, F21-F35. The Government used this patient as evidence of Petitioner's wrongdoing even though she was not mentioned in the Indictment nor was she even a Medicare patient. App. at F37.

The Government proceeded to argue the Hahn evidence on three separate instances in its closing statements to the jury:

1. "You take a look at the trip sheet. 73-year-old female, complete cardiac arrest. Patient has rigor mortis. Pooling of blood to the lateral side of the body. Patient is cold to the touch."

   "From this and all the terrible mistakes that his people made on the trip sheets Mr. Vereb explained to you in detail how it's perfectly proper for him to go ahead and bill Medicare for an IV, placing on here that there was a cardiac monitor and oxygen and CPR. This body was a body, cold, dead, for hours. Can there be any

mistake in your mind when you look at this that when he says on here -- and he said he did it. He admitted he wrote the claim and then he went on to explain why it was perfectly okay, but is there any doubt in your mind, using your common sense, that when you as a person read this, there was a paramedic and the person is in complete cardiac arrest, IV, oxygen, CPR -- I mean, you're working on the body. It tells you you're working on the body, but he doesn't want you to see it that way. . . ." App. at F41.

2. "I suggest to you there was never a time when he (Appellant) was not personally handling the important business of billing, creating the words that went down on claim forms. You will see the differences when you look through them. They're astounding, just like the last one I showed you today on M(N)urisa Hahn". App. at F58.

3. And again, in rebuttal argument: "Let's talk about Mrs. Daytner. Did you see how quiet Mrs. Daytner got after she started to look at the document I handled to her? Her voice lowered to a whisper. You could hardly hear what she was saying. What was in her hands? The documents introduced into evidence. That's the first time she saw the bill that the defendant filed for that dead body that was brought into the emergency room". App. at F61.

The statements are inflammatory, prejudicial and shift the focus from patients who were named in the Indictment to a graphic and morbid image of a "dead body".

REASONS FOR GRANTING THE WRIT

I. **The Third Circuit Court of Appeals Has Completely Disregarded This Court's Recent Decision In United States v. Dunningan And This Case Should Be Remanded To The District Court To Make The Requisite Review Of The Record And Specific, Independent Findings That Are Necessary Under Dunningan To Establish Perjury For Sentence Enhancement Purposes In Light Of The Third Circuit's Plain Error.**

In his brief in the Third Circuit, Petitioner argued that his two-level sentence enhancement was not supported by the evidence, citing that court's recent decision in United States v. Colletti, 984 F.2d 1339 (3d Cir. 1992) which held, inter alia, that the defendant's perjury must be clearly established and supported by evidence other than the jury's having disbelieved him. Petitioner's brief and reply brief in that court were filed in December, 1992, and the court issued its decision on April 15, 1993. In the interim between filing of briefs and the circuit's decision this Court issued its decision in United States v. Dunningan, _____ U.S. _____, 113 S. Ct. 1111 (February 23, 1993).

The Third Circuit did not mention Dunningan (Nor Colletti, for that matter), nor did it discuss the sentencing procedures followed by the district court to arrive at the two-point enhancement. Although this Court upheld the

constitutionality of U.S.S.G. §3C1.1[1] in Dunningan, it also made it quite clear "that if an accused challenges a sentence increase based on perjured testimony, the trial court must make findings to support all the elements of a perjury violation in the specific case". 113 S. Ct. at 1118.

A witness testifying under oath commits perjury if he or "she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake or faulty memory". Dunningan, 113 S. Ct. at 1116. Where a defendant objects to a perjury enhancement under U.S.S.G. §3C1.1, this Court delineated the district court's duties as follows:

> a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same, under the perjury definition we have set out. (Citations omitted).
>
> When doing so, it is preferable for a district court to address each element of the alleged perjury in a separate and clear finding.

113 S. Ct. at 1117.

---

[1]Section 3C1.1 provides:

> Obstructing or Impeding the Administration of Justice
>
> If the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the investigation, prosecution, or sentencing of the instant offense, increase the offense level by 2 levels.

Here the circuit court did not share with the parties its review of the district court's sentencing determination, and it did not even mention the Dunningan case. It is clear that the district court failed to make the specific independent findings mandated by Dunningan, however, as to each element of perjury and the evidence in the guilt phase of trial from which those elements are gleaned.

To be sure, as Dunningan recognizes, there are cases where the district court's enhancement determination will be sufficient despite a lack of detail in its findings where, as in Ms. Dunningan's case, the testimony of the Government's witnesses is so diametrically opposed to the defendant's on a key material issue; however, it is just as clear that, in crimes more complicated than the drug transactions that were witnessed in Dunningan , a district court will have to do more than, as here, simply declare the defendant's trial testimony generally unworthy of belief or "untruthful". Compare United States v. Shonubi, _____ F. 2d _____, 1993 U.S.App. LEXIS 16060 (2d Cir. 1993) (where defendant's trial testimony that he never delivered heroin was contradicted by law enforcement witnesses' testimony that, inter alia, a number of heroin-filled balloons were removed from his body and was disbelieved by jury , district court's finding that defendant "lied throughout his testimony" was an adequate independent finding under Dunningan to permit sentence enhancement for perjury), with United States v. Rubio-Topete, _____ F. 2d _____, 1993 U.S. App. LEXIS 15891, *19 (9th Cir. 1993) (district court's findings that defendant's "behavior (and)

his testimony. . .indicate that the obstruction of justice finding is appropriate" and his testimony "inaccurate" regarding his knowledge of whether a car contained drugs, the district court "has not made factual findings encompassing all of the factual predicates necessary for a finding of perjury.").

Petitioner respectfully submits the district court's findings were so plainly inadequate under Dunningan and the Third Circuit's failure to consider Dunningan so obviously erroneous, this Court should vacate the Circuit's judgment order and remand to the district court for additional proceedings.

II. Petitioner Was Denied A Fair Trial As Guaranteed By The Fifth Amendment To The United States Constitution By The Government's Use of Non-Probative Evidence And Inflammatory Argument To The Jury Regarding That Evidence Which So Plainly Prejudiced Petitioner As To Render The Proceeding Unfair. The Third Circuit's Failure To Acknowledge Its Own Precedent And Apply It To Petitioner's Case Is Such A Departure From The Accepted And Usual Course Of Judicial Proceedings As To Call For An Exercise Of This Court's Supervisory Powers.

Fed.R.Evid. 404(b) prohibits the use of uncharged misconduct to prove the character of a person in order to show action in conformity therewith. The evidence is inadmissible unless the proponent, in this case, the Government, can demonstrate that the conduct is necessary to prove one of the separate and distinct exceptions. Because 404(b) evidence can be so damning to an accused, it has been suggested that the Federal Rules Committee adopt the ABA Report which proposes that the proponent show by clear and convincing evidence that not only

does the evidence fall within an exception but that the probative value substantially outweighs the danger of unfair prejudice. Unlike Fed. R. Evid. 403, this proposal shifts the probative/prejudice burden to the proponent seeking admission of the 404 (b) evidence. Becker, J. & Orenstein, The Federal Rules of Evidence After Sixteen Years, 60 George Washington Law Review 857 (1992).

Uncharged misconduct evidence can be so prejudicial to the accused and so helpful to prosecutors that it has been called "the Prosecutor's Delight". Comment, Evidence of Prior Acquittals: An Attack On The "Prosecutor's Delight", 21 UCLA L. Rev. 892, 896 (1974). The available research data from the London School of Economics and the Chicago Jury Project confirm that uncharged misconduct evidence will "usually sink the defense without a trace". Imwinkelried, Uncharged Misconduct Evidence, §1:02 (1992).

Although introduction of this evidence and argument thereon was not objected to at trial, Petitioner urges this Court to apply the plain error doctrine. Federal Rule of Criminal Procedure 52(b) provides that "plain errors or defects affecting substantial rights may be noticed although they were not brought to attention of the Court".

In the United States v. Scarfo, 850 F.2d 1015 (3d Cir. 1988), The Third Circuit stated:

> In addition to the Rule 404(b) test, evidence of other crimes must also be evaluated against the unfair prejudice standard of Rule 403. A trial judge, therefore, may exclude logically relevant other crimes evidence if its probative value is substantially outweighed by the risk of

> undue prejudice. United States v. Cook, 538 F. 2d 1000, 1003 (3d Cir. 1976). In making this determination, the trial judge must appraise the genuine need for the challenged evidence and balance that necessity against the risk that the information will influence the jury to convict on improper grounds. Id. See United States v. Driggs, 823 F. 2d 52, 54 n. 2 (3d ACir. 1987).

850 F. 2d at 1019.

Most recently, in Government of the Virgin Islands v. Pinney, 967 F. 2d 913 (3d Cir.. 1992), that circuit court utilized the evidentiary standards in Fed.R. Evid. 403 and 404 (b) to find that evidence concerning defendant's alleged rape of rape victim's older sister was not admissible. A new trial was granted. Applying this analysis to Petitioner's case, what probative value could there be to yet one more instance of discrepancy between a trip sheet and claim form? The answer is: very little value when the Government had at least fifty-nine (59) examples of discrepancies from the Indictment counts alone!

Petitioner queries why the Government chose to mention this particular patient three times during closing argument where she was not part of the Indictment? Petitioner suggests the answer lies in the event's prejudicial nature and impact -- the "Prosecutor's Delight". Clearly, the minimal probative value of the Hahn evidence is heavily outweighed by the prejudice resulting to Petitioner by the Government's inflammatory argument concerning rigor mortis, pooling of blood and the dead body.

The Government's choice to use and argue the Hahn evidence clearly undermined the fundamental fairness of Petitioner's trial. The circuit court's failure to discuss its own

precedent and its cursory dismissal of Petitioner's argument exacerbates the unfairness, adds injury to injury, and invokes this Court's discretionary jurisdiction to exercise its supervisory powers to correct the circuit court's extreme departure from the usual course of judicial proceedings.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit and, on the record before this Court, to reverse and remand the record to the district court for proceedings consistent with United States v. Dunningan, or alternatively, to exercise this Court's supervisory powers over the inferior court's to hear this case to correct the Court of Appeals' departure from the usual, accepted course of judicial proceedings.

Respectfully submitted,

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Pittsburgh, PA 15219

Attorney for Petitioner,
Patrick R. Vereb

Dated: August 19, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit and Appendix was mailed this 19th day of August, 1993, to the following:

Frederick W. Thieman
United States Attorney for the Western
District of Pennsylvania

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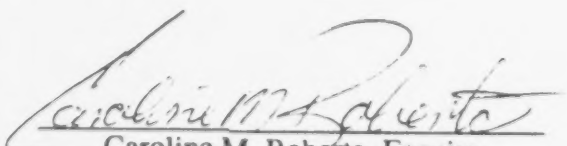
Pittsburgh, PA 15219

Solicitor General of the United States of America
Department of Justice
Washington, DC 20530

DECLARATION PURSUANT TO RULE 29.2 OF THE RULES OF THE SUPREME COURT

I declare under penalty y of perjury under the laws of the United States of America that the within document was mailed, postage and fees paid (USC0426), first-class mail, on the 19th day of August, 1993.



Caroline M. Roberto, Esquire
Attorney for Petitioner

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PATRICK R. VEREB,
PETITIONER,

V.

UNITED STATES OF AMERICA,
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PETITION FOR
WRIT OF CERTIORARI TO
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FOR THE THIRD CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-3497

UNITED STATES OF AMERICA,

V.

PATRICK R. VEREB,

Appellant

SUR PETITION FOR REHEARING

Present: MANSMANN, ALITO and ALDISERT, Circuit Judges,

The petition for panel rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judges who concurred in the decision having asked for rehearing, the petition for panel rehearing is denied.

BY THE COURT,

Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-3497

UNITED STATES OF AMERICA,

V.

PATRICK R. VEREB,
Appellant

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Crim. No. 91-223)
District Judge: Honorable Gustave Diamond

Submitted Under Third Circuit Rule 12(6)
April 8, 1993
Before: MANSMANN, ALITO and ALDISERT, Circuit Judges.

JUDGMENT ORDER

After consideration of all the contentions raised by the appellant, namely: that the appellant was denied a fair trial as guaranteed by the Fifth Amendment by the government's inflammatory use of non-probative evidence and inflammatory argument which so prejudiced the appellant as to render the proceedings unfair, that the district court committed clear error for failing to dismiss the medicare false claims counts because the language of the indictment failed to charge a violation of Title 18, United States Code, Section 787, and that the district court erred in awarding a two point upward adjustment in appellant's sentence for

obstruction of justice pursuant to Section 3C1.1 of the Federal Sentencing Guidelines; it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

It is further ADJUDGED AND ORDERED that appellant's contention that he was denied a fair trial under the Fifth Amendment and the right to effective assistance of counsel under the Sixth Amendment due to trial counsel's alleged ineffective assistance is not reviewable on direct appeal, but in a collateral proceeding in which the factual basis for the claim(s) may be developed. United States v. Theodoropoulos, 866 F.2d 587, 598 (3d. Cir. 1989). We thus do not address this contention at this time.

BY THE COURT,

_____

Circuit Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	Criminal No. 91-223
	)	Pittsburgh, Pennsylvania
vs.	)	August 14, 1992, 9:55 AM
	)	
PATRICK R. VEREB, individually and doing business as Vereb Ambulance Service,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING ON SENTENCE BEFORE HONORABLE GUSTAVE DIAMOND, CHIEF DISTRICT JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
BY: NELSON P. COHEN
ASSISTANT UNITED STATES ATTORNEY

633 United States Court House
Pittsburgh, Pennsylvania 15219

For the Defendant: MICHAEL HAHALYAK, ATTORNEY
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Official Reporter: Marilyn G. Brown
1025 United States Court House
Pittsburgh, Pennsylvania 15219
Telephone: (412) 355-0687

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

Appendix C

(In open court at 9:55 AM on August 14, 1992. Defendant present with counsel.)

THE COURT: We are here in the case of United States of America vs. Patrick R. Vereb, individually, and doing business as Vereb Ambulance Service, at Criminal Number 91-223. On June 11, after a jury trial, defendant was found guilty of a number of counts in the indictment, the jury was undecided as to a number of counts, and several counts were dismissed. This is the time set for sentencing under the Sentencing Reform Act of 1984 as to those counts of which the defendant was found guilty.

Mr. Hahalyak, would you step forward with your client? Mr. Cohen?

MR. COHEN: Do you want us to come to the bar, Your Honor?

THE COURT: If you would step up here, yes.

(Defendant stepped forward with counsel.)

THE COURT: Mr. Hahalyak, have you had an opportunity to review the presentence report?

MR. HAHALYAK: Yes, Your Honor.

THE COURT: Has your client had an opportunity to review that report?

MR. HAHALYAK: Yes, I have, Your Honor.

THE COURT: Have you conferred concerning it?

MR. HAHALYAK: Yes.

THE COURT: You have, I note, a number of objections that seem to be combined as to factual disputes that you have with regard to statements made in the presentence report, as well as your objections to the computations under the Sentencing Reform Act and the Guidelines. I note that you would have some objections as well. In addition, you are offering some evidence with regard to the amount of the loss?

MR. COHEN: Yes, Your Honor.

THE COURT: Why don't we do that first? We will go with your evidence with regard to the amount of the loss, and then we'll address the objections that you have, Mr. Hahalyak.

MR. HAHALYAK: Very good.

(Defendant was seated.)

MR. COHEN: The government will call Special Agent Kerry Ramsey.

KERRY RAMSEY, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION BY MR. COHEN:

Q. Mr. Ramsey, state your full name for the record, please.

A. My name is Kerry Ramsey.

Q. By whom are you employed?

A. Office of Inspector General for the United States Department of Health and Human Services.

Q. And you are the case agent on the Vereb case. Is that correct?

A. That is correct.

of the loss was between 120 and 200,000, and, therefore, 7 points are added in accordance with the Guidelines Section 2F1.1 (b) (1) (H). All right, next.

MR. COHEN: Your Honor, if the Court would hear my argument on the only two issues I have remaining with the presentence report, I will be pleased to make it at this time. That's in regard to obstruction.

THE COURT: Obstruction of justice and perjury.

MR. COHEN: Yes.

THE COURT: All right.

MR. COHEN: In regard to the obstruction argument, it is based, as my brief has indicated, on two different theories. One is that the defendant committed perjury and the second is--at trial, that is, and the second theory is that he influenced witnesses.

THE COURT: Excuse me. I don't know that you offered Exhibit 1, though I think--

MR. COHEN: I don't believe I did.

THE COURT: --you intended to. We certainly have relied on it and there was testimony concerning it, so I'm going to include that in the record.

MR. COHEN: All right. Thank you, Your Honor.

(Government Exhibit 1 was admitted.)

THE COURT: All right. Now go ahead.

MR. COHEN: In regard to perjury, it has been held in

many jurisdictions, six or seven different Circuits, that a defendant who commits perjury, who lies at his trial, even in his own defense, must pay the consequence at the time of sentencing by receiving an increase of 2 offense levels for obstruction of justice.

There is no constitutional right to commit perjury, and in this particular case there were repeated instances of intentional lies under oath by the defendant. In particular, we had a rather dramatic, I felt, moment in the trial at the rebuttal, during the rebuttal case, when two government witnesses pointed out that Mr. Vereb had instructed them personally and in their presence instructed others to take Virginia Miller by personal car to dialysis. He had vehemently denied during the course of direct and cross examination and on cross on several occasions that Virginia Miller to his knowledge had ever been driven in anything other but an ambulance and, beyond that, had ever been driven in an ambulance without having been placed on a stretcher.

The testimony from Deb Copper, who was, I suggest to the Court, unimpeached by cross examination, was very clear and specific that on ten to twelve occasions she was personally instructed by the defendant. She was one of his supervisors and was in the office on a regular basis. She was personally instructed by the defendant to take Virginia Miller to dialysis by personal car.

Pat Shoaf, the last government witness on rebuttal, similarly testified, and she recalled an incident in the offices where she and the defendant watched an ambulance drive by, a Vereb ambulance drive by with Virginia Miller sitting in the jump seat, and the defendant made a remark about that as he watched the ambulance go by, and it was an off-the-cuff, a joking type remark. The driver returned to the offices shortly after the drop-off, and that driver was not scolded she was not fired, she was in no way told that what she did was wrong, and there was--it was business as usual.

Now the reason that this was a material part of the government's case was that it went to the defendant's intent, to his knowledge. We were required to prove beyond a reasonable doubt that he knew that these claims that he was sending in about Virginia Miller were false, and his way of defending was to say he knew nothing. The jury believed otherwise, and in spite of his perjury.

I suggest to the Court there can be no doubt that these were intentional misstatements under oath on the part of the defendant regarding his knowledge of Virginia Miller.

Another important part of the defendant's defense, which was, I suggest to the Court, more perjury, was his control over his business, and related to that was his control over the claim forms that were being sent out. Once again, the jury rejected the perjured testimony and found that the

defendant did have beyond a reasonable doubt knowledge and control over these claims forms. Otherwise, there could have been no convictions.

The defense was diffused responsibility, " It was somebody else's fault, I didn't have anything to do with that, I didn't send in claim forms, Somebody else did that," and so on. We heard that from the defendant from the beginning of his testimony to the end of his testimony, and those were calculated lies, I suggest to the Court. They were necessary in order to attempt to gain an acquittal in the case. But that does not excuse perjury.

Our system of justice cannot stand if it permits or it condones perjury in any way, even coming from a defendant. They have no license to lie when they take the stand, and I would urge the Court on that ground to increase by 2 points the offense level. I cited in my brief the several jurisdictions which support my view on that.

The second and last reason why an obstruction of justice increase is warranted is that the defendant attempted to influence witnesses. It is not necessary under the cases that I cited that he be successful in changing their testimony, but it is important to prove that he did do that, he attempted to do that.

In this case we had two very specific examples. One was testified to by Beverly Hall at trial, where the defendant

Court's attention that in my opinion, (c) still Requires a participant.

THE COURT: All right. I understand your position,--

MR. HAHALYAK: And I state that --

THE COURT: -- and I disagree with it, and so now you have a point made on the record for appeal, if it is appropriate.

But now let's get back to the first two items that were discussed, the obstruction of justice and the perjury.

MR. HAHALYAK: Your Honor, I respectfully submit that he has not obstructed in the--

THE COURT: Let's go to the perjury. There is diametrically contrary testimony -- I don't know if that's proper terminology. There is contrary testimony from the defendant and one or more of the witnesses with regard to certain material matters that were testified to at the trial, and particularly with regard to Virginia Miller. How do you avoid a finding that since the jury rejected the defendant's explanation, they have not in the process in effect found that he was lying?

MR. HAHALYAK: One of the persons that he had referred to was Pat Shoaf. Pat Shoaf testified that she was never asked to falsify anything by the defendant, and yet he has quoted her on this. She specifically said that she had never asked him -- he had never asked her to falsify anything.

the prejudice -- Excuse me.

(Defendant conferred with counsel off the record.)

MR. HAHALYAK: Further, I am told , Your Honor, that insofar as her being in the front seat of the ambulance, at the point where it was described in the testimony, that it is physically impossible for that to be seen from that particular point.

All we could answer, Your Honor, is that where you have witnesses who have come together in order to destroy Pat, and they did that, they are the ones that we say committed the perjury. And the fact that there's a variance between Pat and these people in no way makes their testimony any part the better. It is all what is under the facts and circumstances the most credible testimony. We are speaking about a perjury here, which is a totally different matter.

If you recall, at the time of the banquet, it was these witnesses who came there and sat there and made ridicule of Pat during the banquet. They were fired from his employment. They were put into the hands of a competitor, and in fact, we understand even the FBI went to the competitor's place, Noga's place , to make the interrogations.

You have here the testimony that is actually by persons who have a design, and you cannot consider that as credible testimony.

THE COURT: But the jury did, and under a standard--

MR. HAHALYAK: That is all--

THE COURT: -- of beyond a reasonable doubt.

MR. HAHALYAK: Your Honor, the jury also made findings that I think are relatively impossible to make, but they did make them.

THE COURT: That was a very conscientious jury. They were out for three and a half days, as you point out. You want to suggest that they were hung for three and a half days, but I don't think that is a fair inference to draw from the fact that they deliberated for three and a half days. They never contended that they were hung. They ultimately returned a verdict on a number of counts, not quite as substantial, but the jury was a very conscientious jury, I think.

MR. HAHALYAK: Your Honor, I respectfully state that they were-- they appeared to be conscientious, but they could not have been conscientious, because there were too many findings by them that were totally inconsistent, as I relate in my brief there, with the evidence and the testimony. In fact, they find him guilty of a certain act on a date that all parties agree he had not transported her, let alone the other factors.

THE COURT: I don't know what that reference is to.

MR. HAHALYAK: There were pieces of testimony, indictments here, that under the facts it was -- No reasonable

jury could have done what they did, but they did, and I can't control that at this point.

How can they find criminal intent, Your Honor, when you've got 675 counts against, that he has against himself? It is not the same--

THE COURT: The fact that he may have erred on behalf of the system doesn't justify his intentional attempts to in other instances defraud the system, and that's what the jury found.

MR. HAHALYAK: All right. Let's let--

THE COURT: Entirely so. This is not a civil action. We're not talking set-offs here. This is a criminal action.

MR. HAHALYAK: All right.

THE COURT: And the point, the question submitted to the jury was whether or not--And there was an extensive charge to the jury on intent and the jury found that he had the intent to defraud--

MR. HAHALYAK: All right. Let's--

THE COURT: --and found him guilty of those, a number of those counts.

MR. HAHALYAK: All right. Let's follow that, Your Honor. They found that in most--Many instances, because the transportation, they did not use the equipment that they claimed was used. Now let's analyze that to see how you

can make that a criminal intent.

He had issued an order that at all times when an ambulance had been sent out, they had to use the stretcher. He doesn't gain anything. The persons that gain are the ones--his employees, by not doing the work that they're supposed to, that they testified on the stand that they put in there that they used, and even though they didn't, because they would be fired otherwise. Yet this whole case rests on that. It is false.

THE COURT: There was substantial testimony that the defendant was well aware that Cubellis on numerous occasions was transported seated in either the jump seat or he walked to the ambulance and refused stretchers, didn't obviously need a stretcher, that he was generally ambulatory, that he conducted a business, was dropped off on return trips or an a return trip at a restaurant where a female friend worked, and that the defendant well knew this.

Now the defendant apparently reasoned that, "Well, I'm providing the transportation, and I wouldn't get paid extra for a stretcher anyway, so why shouldn't I get paid for this transportation? The regulation is foolish."

I don't know what the defendant thought, but nevertheless, the defendant submitted a claim that was tailored to entitle him to reimbursement, compensation, when he knew that

if he submitted a claim that was accurate and reflected the facts, he would not be.

That's what this case is about. There was ample testimony to support the jury's finding.

MR. HAHALYAK: Could I answer just your last --

THE COURT: And your motions for post-trial relief have been denied, and I believe properly so.

MR. HAHALYAK: Your Honor, could I answer your statement with regard to Cubellis? This fellow was short of breath. He could walk and be seated anywhere if he wanted to, because he was that type of person. He was stubborn. But this is from the employees, but not because-- never, never when he was there. He would do what he wanted to.

If you read the hospital record, he was bitter when Pat discontinued his services because he would not go on a stretcher.

Whenever he was brought to the ambulance, the purpose was to have the oxygen there to administer to him because it was fatal if he was short of breath.

Forget stretcher. Meaningless. To put a man criminally in jail for a meaningless act is wrong.

THE COURT: Well you have addressed that, and you may have a point on that basis. You may have a point on appeal on that basis. We have cited a Circuit Court ruling

that's to the contrary, but our Circuit may find that you have a point there. I Don't believe that you do. Otherwise, I would have given you relief which you sought. But the Circuit has disagreed with me at times in the past, and they may now. But at this point, that argument is not appropriate.

MR. HAHALYAK: Your Honor, for instance, we know as a fact that he had the doctor telling him that, to take him. He had prescriptions. Was he to deny, say "I'm going to ignore your prescriptions and not take him by ambulance." Is it criminal when a doctor gives him a prescription and then the--

THE COURT: His statement on his claim, if he thought that that was the fact, should have been, "This patient was ambulatory. However, we have an order from a doctor, and that's why we transported him, and, therefore, I want Paid."

MR. HAHALYAK: That's precisely what they did. Listen Judge, --

THE COURT: If that didn't work, then he wasn't entitled to it.

MR. HAHALYAK: Let me make this statement to that: In Cubellis' case, three time an appeal was taken to have it reheard. They reversed it, even though they claimed here and succeeded in finding him guilty on those counts. Even after he was--before he was found guilty, Medicare said he was right. They said criminally he was wrong.

This is false. There is something wrong with the

system when this happens.

THE COURT: Well, there may be. The Executive has the prerogative of determining who they want to accuse of crime and to present evidence thereof to a grand jury. That's the prerogative of the Executive under our system. The function of the Court is to try such cases, and if there is adequate evidence to permit the case to go to the jury, then it is the jury's function to make determinations of guilt or non-guilt.

The government could very well perhaps have decided to proceed civilly and charge the defendant with civil fraud, but this is their prerogative. Whether I agree with it or not is of no moment, and I could debate this matter at some considerable extent, not necessarily in this case, but in other cases, with the government, and I have at times when I thought it was appropriate to do so. This is not one of them.

MR. HAHALYAK: Your Honor, I would not want to be appraised by my enemies who admittedly were my enemies, who left me, or who were either fired or left me, and then have a perjury charge, when we can show you statements made by the opposition.

And when he speaks about his stopping to speak with the witnesses not to speak with anybody or whatever it was, even the FBI stopped their witnesses from talking to me. I couldn't talk to them. They said, "The FBI told me I can't talk to you."

THE COURT: Well, I hope they didn't,--

MR. HAHALYAK: Well, they did. They told me that.

THE COURT: I hope they didn't, because that would be improper for them to do. Witnesses don't have to talk to you, unless they are ordered to by the Court, but they are certainly permitted to talk to you. The government does not own a witness, and it would be improper for the government to tell a witness they shouldn't talk to defense counsel. But that again is not what we are here to do.

MR. HAHALYAK: I am simply concluding by saying, Your Honor, that the witnesses that spoke had evil in their heart. They worked together on this.

THE COURT: Well,--

MR. HAHALYAK: If you were to appraise this, you can't--you mustn't accept what the jury has stated.

THE COURT: Mr. Hahalyak, I have heard this argument.

MR. HAHALYAK: Yes. I--

THE COURT: This whole matter, according to you, is the concoction of some competitor, Noga or whoever his name is. But I sat here and I heard the testimony of this one lady who sobbed because of having to give testimony against the defendant. She wasn't here motivated by any competitor, I don't think. But in any event, you made those points to the jury, and the jury rejected them. At least in some cases they did. So that there is a

valid conviction here. Regardless of what motivated the witnesses to come forward, there is a valid conviction here.

MR. HAHALYAK: Even in that case, that lady had been charged with funds that had misappropriated, Judge. Can't we look at the acts that they committed? And this was from a charitable agency.

I merely say to Your Honor that--I'm barking up the wrong tree, but I am firmly of the opinion that there is a great injustice done in this case.

THE COURT: Well, we hope that there has not been, and the evidence, I must say, is more than sufficient to justify the verdict of the jury. They believed the testimony of these witnesses, and I was not shocked by the verdict. I must say that. This is not the crime of the century by any means, but it is a significant kind of antisocial act that requires, I believe, the attention of the system, and I believe that the witnesses who testified were convincing, and they certainly convinced the jury.

So, as I said, the government could have elected to proceed on civil fraud, but they chose not to, and that's their prerogative.

MR. HAHALYAK: Judge, let me ask one question. It troubles me. Should a person be convicted of a felony when the ingredient that brings about the conviction is the fact that a simple thing as a stretcher was not used and represented to be

used, and he is to be condemned? He pays that person for that job.

THE COURT: You see, Mr. Hahalyak, I would expect a lay person to reason as you are reasoning. I would not expect a lawyer to reason as you are reasoning.

Yes. The system says, "If you do A, B and C, we will pay you money." Now you may feel that "It is unreasonable for them to say that I have to do A, B and C in order to get money, and therefore I did A and B, I'm going to lie about C and get money." That's a crime. That's a false claim.

I can't understand, although I don't condone it, a lay person, but I can't understand a lawyer making that kind of an argument.

MR. HAHALYAK: Well, I make it because--

THE COURT: You should know better.

MR. HAHALYAK: No. For this reason. For this reason, Your Honor: That was a totally immaterial consideration to the payment. Medicare pays simply because short of breath.

THE COURT: Medicare,--

MR. HAHALYAK: If he--

THE COURT: Medicare has the right to determine under what circumstance they are going to gave up their money. The system is such that if that is unreasonable, we have Congress people and so forth who have influence on the system, and you

THE COURT: Well, I hope they didn't,--

MR. HAHALYAK: Well, they did. They told me that. go to your Congress person or you go to somebody else and have that changed because it is unreasonable. But they have a right and an obligation to determine under what circumstances they are going to dispense their funds. Their funds are limited, so they can't be dispensing funds for people who want to use an ambulance when there is some other way that they can get to where they want to go. So in order to have enough funds to transport those who really need to have ambulance service, they have to restrict it to just those people, and it is their function to make the determination as to whom the reimbursement will apply. And that's really what the basis for it is.

Now, it's up to each individual person who supplies services to use his or her own judgment as to whether that is a good reason or not a good reason. It's not for them to siphon off funds because in their judgment they're performing a service that should be reimbursed. That isn't the way the system works. If it were to work that way, that fund would be depleted very quickly, and people who absolutely need to have an ambulance and who absolutely can not afford to have an ambulance wouldn't be getting it. But Charles Cubellis, who could get a taxi, who could have a friend drive him to the dialysis, didn't have to have an ambulance, and you shouldn't be using the funds for a person who was absolutely bedfast.

MR. HAHALYAK: Judge, I am with you. If a person doesn't need it, he shouldn't get it. Anybody that seeks to

THE COURT: Well, I hope they didn't,--

MR. HAHALYAK: Well, they did. They told me that. get money for it should be condemned and criminalized.

What I'm saying, Judge, is this: I'm saying that every person that he used, if we put a doctor on that stand, he would have said, "Give him that ambulance." That's the point.

THE COURT: Doctors are very--and properly so,--considerate of their patients, and as long as it's not coming out of their pocket, they would like to see them transported in the most convenient and comfortable way. But that isn't, again, the proper--That isn't the standard. It may be, it may be that if a doctor gives a prescription, that is the basis to transport and to get paid. If so, say so. If so, say so. If it isn't, don't say that you used a stretcher when you didn't, in order to get reimbursed. That's what it is all about.

MR. HAHALYAK: Your Honor, if we go on small points, irrelevancy, and I am with you a hundred per cent. If the person doesn't need it, give it to the defendant, if the patient never needed it. But if he needs it, don't let these irrelevant things as existed here control and criminalize a human being.

Because I will say this. I will take any person's records, any person's records in this business, and they will not equal .035 of errors that they found within that entire group of files, You Honor.

THE COURT: That may be. That might be.

MR. HAHALYAK: Now--

THE COURT: Well, I hope they didn't,--

MR. HAHALYAK: Well, they did. They told me that.

THE COURT: And maybe everybody should be brought in and given the litmus test of a grand jury. But that is not before me, and heaven knows we have enough to do with matters that are before me. So let's get on with it.

MR. HAHALYAK: That's the reason I'm saying this should be reduced to cases where there are true violations.

THE COURT: I have made the finding with regard to the 3B1.1(c), and I'm going to adhere to that. I don't believe that it's as simple as finding other individuals who may have helped. I think that it requires the mens rea, and the Third Circuit has said that, and I am not satisfied on this record that every one of these persons would have been subject to prosecution as a participant. So the 2 points are, I think, sufficient.

So far as obstruction of justice, I think that there were comments made that possibly could be construed as obstruction of justice, but they are not as pointed as I would like to see in order to add 2 points to the defendant's conduct.

I believe that on reconsideration, that the government does make a point with regard to perjury. My inclination is to be very, very circumspect about charging or penalizing a defendant who elects to take the stand in his own defense. On the other hand, I think that the government has cited more than ample authority for the proper consideration by the Court, and I believe that the

evidence in this case is sufficient for the Court to find by at least a preponderance of the evidence that the defendant made statements on the stand in his own defense which were untruthful statements.

Normally, prior Guidelines, the Court would have taken that into consideration, and I believe that the defense bar was aware of this Court's policy in that regard. But the defendant has a right to a vigorous defense. He does not have the right to perjure himself, and when I felt in the pre-Guideline days that a defendant had perjured himself, that was a factor I took into consideration in the sentence.

Under the Guidelines, that could be taken into consideration in determining where within the range the sentence should be, and in less clear cases, that's probably the way that it should go. But the Guidelines have established the policy, and I think that the Court is bound by that.

This takes us--It doesn't change the Guidelines, the maximum, which is 24 to 30 under my previous computation. It is now 30 to 37, I presume, with the additional 2 points.

So the Court will make that finding, though I must say it is somewhat reluctantly

All right. Mr. Hahalyak, let's take a ten-minute break, and then we will address what is left of the matters that you have raised which have not been subsumed in what we have already done.

(Recess at 11:30 AM.)

(In open court at 11:345 AM. Defendant present with counsel.)

THE COURT: I think we have handled the government's points. Now we are at the defendant's objections.

(Defendant conferred with counsel off the record.)

MR. HAHALYAK: Your Honor, as far as the sentencing objections, I have none other than what has already been raised. I would, however, like to place Mr. Vereb on the stand to testify with regard to matters that have been referred to.

THE COURT: Well, in what--Of course, he may testify if he wishes as part of the sentencing or the sentencing hearing, but on what points are you going to ask him?

MR. HAHALYAK: The perjury or obstruction of justice.

THE COURT: I thought we had gone through that in its entirety, but if you have ahd some additional thinking, all right. I will vacate my ruling long enough to hear what he has to say, and if he convinces me, then we are back to square one again.

PATRICK R. VEREB, DEFENDANT, SWORN

DIRECT EXAMINATION BY MR. HAHALYAK:

Q. Give us your full name.

A. Patrick Roy Vereb, Sr.

Q. You are the defendant in this case?

A. That's correct.

Q. You heard the testimony pertaining to perjury or obstruction.

A. Yes I did.

Q. Could you please give your explanations to that testimony?

A. Yes. I respectfully ask the Court to reconsider the additional 2 points charge onto the total points that have already accumulated, for the fact that where the building is located, where our office is located, where--the place where Pat Shoaf or myself would have been is not in view of the street of where Virginia Miller would have been going to Dialysis Center. Mrs. Shoaf's office is in the other end of the building, facing the opposite street, but even if she would have been circumstantially by a windown other than in her own office, there is no window in our building that she could stand at, even with me, look out that window and see the street where Virginia would be going to Dialysis Center. There's just absolutely no way that she could see the patient.

This morning the District Attorney said that she could look out the window and see Virginia Miller sitting on the jump seat of the ambulance and when the crew came b ack there was no mention of it and there was no--there was no nothing about reprimanding the crew for it. Your Honor, respectfully, if you would be standing alongside the ambulance just a few feet away and would look in, you couldn't see somebody on a jump seat, let alone 50 yards away from the street, with a brick church in

your way. There's just absolutely no way that you could have looked in an ambulance to see somebody on a jump seat. There just isn't any way.

I don't think I have anything more on this particular point, although I would like to address you, but not on this point.

THE COURT: Cross examine?

CROSS EXAMINATION BY MR. COHEN:

Q. From your office can you see any streets?

A. Yes. My office is on--My office, particularly my personal office, faces Adams Street. It's a good 200 feet, 300 feet away from the main street where Virginia would have been going to dialysis.

Q. Your office faces Adams Street?

A. Adams Street. That's correct.

Q. Can you see any other streets?

A: You would have to look out my window and look to the right-hand side to see the main street, and it's at least 200 feet away. There's an entire length of a church plus an alley before you get to the edge of my building, amd there's one half of my building before you get to my office. It's a good distance. It's a good 50 yards, if not more.

Q. So what streets then can you see from your office? Adams Street and Main Street?

A. Looking out my window, I can see Adams Street. Okay?

Q. Are there any other streets that you can see from your office?

A. You would have to look to the right-hand side down to see the cross street that's down at the corner. Tht's East Washington Street, and that would be the street that Virginia would be coming up on. That--

Q. So you could see East Washington Street from your office, but you would have to look down?

A. You would have to go like this (indicating) to look at it. That's correct.

Q. So you can see it, though?

A: Yes sir.

MR. COHEN: Okay. I have no other questions.

REDIRECT EXAMINATION BY MR. HAHALYAK:

Q. Would you be able to see that which she described?

A. No, sir.

Q. Are you certain of that under oath?

A. If you were looking for it, if you were absolutely standing there looking and you were absolutely waiting for that ambulance to come by and you were loking for it, when it would go by, it would be impossible.

Q. Is there any other testimony you want to give with reference to--

A. No. And just the circumstances that she and I would both be squeezed up in a little small window, it's not a wide

window, just a little window, and my desk is right there, so there would be only about 18 inches between the desk and the window. We would have to be there--We would both have to have our heads there and be turned to the right to see her go by, and you can't see into the ambulance. You can't see into them to see somebody on a jump seat.

MR. HAHALYAK: Your Honor, that's all the questions I have on this particular point. However, I would proceed with regard to phases of his financial condition, if Your Honor wishes.

THE COURT: We will get to that. Do you have anything else on this point?

MR. COHEN: Yes.

RECROSS EXAMINATION BY MR. COHEN:

Q. Is there a radio or transmitter that you have in your office area or you used to have in your office area so that people who were radioing in about their location may have their voice come out of that transmitter in your office or near your office?

A. That's possible, yes.

Q. And if an ambulance was going to be coming by and somebody said, "I'm on my way somewhere, I'm going to be taking Virginia Miller to dialysis, I will be driving by the office," that's something that might occur. Is that right?

A. Not exactly, no.

Q. And--

A. The--Excuse me. I want to answer your question, but not that generally.

Q. Your answer was, "Not exactly."

A. Okay.

Q. And out of this transmission, if someone in the office were aware that an ambulance were coming by, they might take a look out the window to see what was coming by, mightn't they?

A. No.

Q. Pat Shoaf lied when she said she did that?

A. Yes, sir.

Q. She made that up.

A. There's lots of things, but, yes, sir.

Q. She made lots of other things up , too?

A. Yes sir.

Q. And in regard to this transmission that would have been received--No. Strike that. you mentioned that in the ambulance itself, the position of Virginia Miller riding in the jump seat would not be visible at all--

A. That's--

Q. --to a person. Why is that?

A. Because the jump seat is on the driver's side. It's at least three feet away from the passenger's side window. The passenger's window is only like this (indicating). It has a shelf in front of it. There would be at least four feet of space, dark space, and then

you would have her over in a corner behind the driver's seat. It's impossible to see it.

Q. How about the front seat?

A. If somebody was in--

Q. Can a person looking at an ambulance see if a patient riding in the front seat?

A. Yes.

Q. Okay.

A. Yes.

Q. All right, and is it possible that Pat Shoaf saw Virginia Miller sitting in the passenger's seat?

A. When it rode--When the ambulance rode by? Is that possible?

Q. Yes.

A. Is it possible she seen it without me there? Her testimony was that I was standing with her.

Q. I asked a very simple question. I said, is it possible Pat Shoaf saw Virginia Miller riding in the front seat or the ambulance?

A. Only if she was in my office, squeezed between my desk and my window, had her head out the window. No it's not possible, not--

Q. But she could have done it if she would have been in your office, looking out your window, straining to see down Washington Street?

A. I don't think so. Not with her eyes. Not with her glasses. Not the way--She can't see that far. It's 50 yards at least.

Q. Fifty yards. People can't see 50 yards, Mr. Vereb?

A. We're talking about a small head and a moving ambulance going by.

Q. How fast would it be going?

A. I have no idea, sir. I wasn't there.

Q. You weren't there?

A. Not to see the ambulance go by, no.

Q. If there weren't two people involved as crew members but there was only one driver and Virginia Miller was riding in the front seat, then it wouldn't have been a problem for an observer such as Pat Shoaf, who hears it on the radio that the ambulance is coming. Judy Hare is about to be driving back that way, says, "I'm taking Virginia Miller over to dialysis, I will be driving by the office in a minute or two," radios in. Pat goes to look and strains. We'll give you that, Mr. Vereb, that she strained, that she had to bend over and maybe look out the corner of the window. But your view is that all of that would be impossible.

A. It would be more than impossible. For one thing, Judy Hare would only make two transmissions, one, that she's leaving Virginia's residence, two, when she has arrived at the hospital, and there's eleven and some miles in between. I think it

may have been even 15 miles in between. And there's just absolutely no reason why--how there would be any radio transmission.

Q. But Pat Shoaf testified she heard one.

A. I don't remember that. She could have, but I don't remember.

Q. So your view is that Pat Shoaf lied about this?

A. Yes, sir.

MR. COHEN: Okay. I have no other questions on that issue.

THE COURT: The witness may step down, and we will get to the other matters.

(Witness stepped down.)

MR. COHEN: Your Honor, if the Court is reconsidering its decision, I would like an opportunity, if it's appropriate, to reargue why the perjury enhancement is appropriate. The only thing that was attacked was one very small part of my argument.

THE COURT: The perjury wasn't solely based on that item of testimony. I will not change my ruling on that. Get to the other matter.

MR. HAHALYAK: Your Honor, the remaining matters deal with the financial picture primarily.

THE COURT: All right.

MR. HAHALYAK: Take the stand.

(Defendant conferred with counsel off the record.)

THE COURT: Oh, wait. Let's se if there's something to argue about with regard to the financial picture.

MR. HAHALYAK: No, Your Honor.

THE COURT: The presentence report indicates that the defendant has a net worth of something like $49,000, and included in the assets, as I recall, is a ten or $12,000 item which constitutes entireties property, which I don't think properly should be considered in determinig whether or not the defendant can make restitution. In addition to that, there is a $10,000 item, I believe for an ambulance, and a $3,000 item for an ambulance, and I just question whether those are liquid--or those are fair market value numbers that could be realized. I question whether there's enough in the presentence report to form the basis for a restitution order here.

MR. HAHALYAK: I have no further evidence, Your Honor. I agree.

THE COURT: Well, I will let the government respond to that.

MR. COHEN: I am not going to produce any testimony or concrete evidence to establish a different financial wherewithal of the defendant as we sit here today. During the course of the investigation we have come to learn many things that would indicate that he made a lot of money and that those moneys had to go somewhere other than his business, because of our

THE COURT: Oh, wait. Let's se if there's something to argue about with regard to the financial picture.

MR. HAHALYAK: No, Your Honor.

understanding of how he ran his business, which was basically on a shoestring.

So I can't as an officer of the Court come forward and proffer or produce a lead pipe in the ground with cash or hidden in a bank account somewhere or anything of the like, and, therefore, I don't feel that it would be appropriate for us to challenge what the U.S. Probation Office has found.

I have, as an advocate and as an investigator in this case, to the extent that I was reviewing investigative work, a very strong belief that there are assets, but I can't prove that, so I won't go any further with it.

THE COURT: And based on the presentence report, there are insufficient assets to justify a restitution order or even a fine, for that matter, if we consider the family impact, which we are obliged to do. Don't you agree with that?

MR. COHEN: I would have to agree with the Court's judgment on the numbers that are before it, and since I can't change those numbers, ultimately I have to agree with the Court's position.

THE COURT: Suppose--If you later find a cash hoard somewhere, you can at that point civilly proceed. I would think so.

MR. COHEN: Well, I'm sure we will be doing that, Your Honor.

THE COURT: So that will perhaps obviate--

MR. HAHALYAK: I am rather--

THE COURT: --any evidence that you--

MR. HAHALYAK: I am rather disturved by the government's statement of innuendo and admitting making an investigation. You've got the facts before you, everything has been given, but innuendo remains that there are other things here that are hidden , and I think that should be entirely improper.

MR. COHEN: That is not a fair criticism, Mr. Hahalyak. Counsel for the government states that a lot of money went through the defendant's hands and that the government candidly admits that they can't identify where that money may be at this pint. So that's the end of it, isn't it?

MR. HAHALYAK: Your Honor, Mr. LaVan, who cooperated with him, and who knew the financial picture, and who was in control of the empire, so-called, he testified that he had a hard time during his heydays to meet the payroll, that they had to do certain things in a hurry in order to meet it. This is--And his innuendos are totally inconsistent, not only with his witnesses, but with the report submitted to the government.

THE COURT: All right. The next items. You have a number of facts that you say are in dispute, and I think we have to address them seriatim. Let's go to the first one. Do you have it before you , and do you have yours before you, Mr. Hahalyak? That's this document. That's objections of defendant.

THE DEFENDANT: He doesn't have his.

It's your objections to the presentence report.

THE COURT: Who prepared this?

MR. HAHALYAK: I have it, Your Honor.

(Pause.)

MR. HAHALYAK: I have it, Your Honor.

LAW CLERK EWING: Should I make a copy?

THE COURT: Do you have one? I don't think you have time to do that.

MR. HAHALYAK: I have it, Your Honor. Okay.

THE COURT: Do you have it?

MR. HAHALYAK: Yes.

THE COURT: All right. There were two versions of it. One was the bare version which simply indicated the areas that you found dispute with, and the other one is your response, where you state why you disputed the finding.

The first one, you dispute the statement contained in Paragraph 5 that the defendant would receive moneys for use of a stretcher, and I think you are accurate that there was no additional money for that, and the presentence report will be modified to remove the matter on page 2, Paragraph 5, which states "or movement to and from the ambulance b y stretcher." Just that phrase is incorrect, and it will come out.

The next one is page 3, Paragraph 6. You challenge the statement contained there that the defendant was overpaid.

Well, what you're doing is challenging the jury's finding, and your statement is contained in the presentence report, your version, and your position is known, and I don't think that we need to amend the presentence report in that regard at all.

And all of this about Fombell and so forth, that is your position, and I don't believe that the presentence report is erroneous in what it states.

Next we go to page 3, Paragraph 8, and you challenge that statement which has to do with charging for patients who were moved by ambulance and could have been moved by conventional vehicles, and what you're doing is challenging allegations that are contained in the indictment or in the presentence report, and your position is known. I am going to deny any change in that.

Next you go to page 3, Paragraph 9, and you challenge the language, "In order to support his false claims, the defendant directed his employees to falsify trip sheets."

You say, "This statement is erroneous. The fact is that there were no false trip sheet."

Does the government agree with that?

MR. COHEN: I don't agree with the defendant. I agree with the presentence investigation.

THE COURT: The evidence was that there were trip sheets that were falsified.

MR. COHEN: Absolutely.

THE COURT: And so, while you may disagree with that and that would be your version of the offense, and that presumabaly is contained in the version of the offense or, if it isn't, you may certainly offer that, but that doesn't make the statement in the presentence report erroneous and subject to correction.

(Defendant conferred with counsel off the record.)

THE COURT: Page 3, Paragraph 11,--

MR. HAHALYAK: In answer to that, Your Honor, the reason that objection was made is that the only variance would be, if any, in the claim form, not in the trip sheet, you see.

THE COURT: Well, the trip sheets, as I recall the testimony, were changed to show that a stretcher was used, changed to show that the patient was not ambulatory. This is done on the trip sheet. Is that not right?

MR. COHEN: That's absolutely correct. There were instructions given by the defendant to the drivers to change trip sheets or not to write down things that were true.

THE COURT: I think that's true. Now you say that it is erroneous, and that's your position, but--

MR. HAHALYAK: I think it's unimportant right now.

THE COURT: Well, I don't think that it is important at this point, but if there are erroneous statements in the presentence report, whether they're material or not, we have to deal with them, either indicate that we are not going to

consider them, or correct them.

MR. HAHALYAK: Right. Our understanding, Your Honor, is that there is not a single trip sheet that was varied. The proof has been entirely that the claim form varied from the trip sheet. But we--

THE COURT: All right. i know what you're saying, and my recollection is different. In any event, this is not going to be a factor that's going to impact on the sentence.

Page 3, Paragraph 12, "In addition to those submitted for Medicare payments, Mr. Vereb also sent false claims to private insurance carriers." We don't have any evidence of that. We started to get some evidence of it, but I rejected it.

MR. COHEN: That's true, Your Honor, except for one. There was evidence during the course of the trial in cross examination of the defendant about a claim form involving Murisa Hahn, and Murisa Hahn's claim form was sent to Travelers Insurance Company, and that was a--You may recall this one, that the ambulance drivers came upon a body that was cold, blood had pooled rigor mortis had set in and so on, and Mr. Vereb sent a claim to Travelers that he had--his drivers had put an IV, that they gave oxygen, they did CPR, all of this on a corpse, and that was to Travelers, and that's why that's in there.

Now it does not impact on the sentence, because it would only come under more than minimal planning and when you

have more than one victim, and we have already resolved that, but it is an accurate statement by USPO.

THE COURT: All right. In any event, the Court will not take it into consideration in the sentence.

Page 4, Paragraph 13, same with that.

Page 4, Paragraph 18, and that's just a question on Mr. Hahalyak's part concerning the base level.

MR. HAHALYAK: That was a question.

THE COURT: And again, page 4, Paragraph 19, with regard to the private insurance companies, that is not going to impact on any aspect of the sentence nor restitution or a fine. So we will not consider that.

Next is a challenge with regard to minimal planning. We have taken care of that.

Role in offense, we have taken care of that.

And now we are down to page 5, Paragraph 32, the maximums, and those are accurately stated in the presentence report, and we don't need to change those.

And the remaining--Well, the next one, page 6, Paragraph 37, the Guidelines provision is disputed by the defendant, but it is an accurate statement.

And the next has to do with the assets of the defendant, and we have taken care of that, I believe.

Now the factors omitted from the presentence report, I don't believe that any one of them needs to be included in

the presentence report, but certainly they are matters that can be included with regard to the defendant's version of the offense, that 675 trip sheets contained errors that worked against the defendant, and the same way with the oxygen non-payments, percentage of errors over alleged fraud. None of that, I think, is really relevant or needs to be included in the presentence report. It can be included in your version of the offense, if you wish. In any event, the Court notes them. To the extent that they contain anything that is in mitigation, and I really don't see anything here, the Court will take them into consideration.

And rejects the argument contained in Paragraph 13 that the acceptance of responsibility is unconstitutional. I don't see that that's a valid argument.

All right. Now the Court will modify its tentative findings by adding the 2 points in the final paragraph on page 2 and the balance thereof on page 3 as indicated for the perjury. That will change the offense level to 19 and the Guideline range then changes to 30 to 37 months?

MR. COHEN: That 's correct, Your Honor.

THE COURT: From 24 to 30 months. All right.

Mr. Hahalyak, we are now at the time for the sentencing. If you would step forward with your client.

Mr. Cohen.

(Defendant stepped forward with counsel.)

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Criminal No. 91-223
	)	
PATRICK R. VEREB, individually and d/b/a Vereb Ambulance Service, Defendant	)	

OPINION

DIAMOND, C.J.

On December 19, 1991, defendant was indicted on five counts of mail fraud, in violation of 18 U.S.C. §1341, and fifty-nine counts of false claims, in violation of 18 U.S.C. §287. A number of these counts ultimately were dismissed. On June 11, 1992, a jury convicted defendant as to Counts Two, Four, Eight, Nine, Ten, Eleven, Thirteen, Fifteen, Sixteen, Seventeen, Nineteen, Twenty, Twenty-One, Twenty-Three, Twenty-Six, Twenty-Nine, Thirty, Thirty-Eight, Thirty-Nine, Forty, and Forty-one. The jury failed to reach a verdict as to Counts One, Five, Six, Seven, Forty-Two, Forty-four through Fifty-Two, Fifty-Five, Sixty, Sixty-One, and Sixty-Two. Defendant now has filed a motion for judgment of acquittal or in the alternative for a new trial. For the reasons that follow this motion will be denied.

Defendant cites numerous reasons why his motion for judgment of acquittal or for new trial should be granted. Defendant's first argument is that no crime is charged in many

of the false claims counts. Defendant cites Count Forty-Three of the indictment as typical of the false claim counts which he contends are inadequate. Count Forty-Three provides in pertinent part that:

> ... On or about April 30, 1990, in the Western District of Pennsylvania, the defendant, PATRICK R. VEREB, did make and present and cause to be made and presented to the United States Department of Health and Human Services, Health Care Financing Administration, an agency of the United States, through its agent and intermediary, PBS, a claim for payment upon and against the United States which the defendant, PATRICK R. VEREB, knew to be false, fictitious, and fraudulent in that the defendant made and presented a claim for $390.00 for the ambulance transportation of Medicare patient Charles Cubellis on May 26, 1989, representing that the ambulance transportation was compensable by Medicare, whereas , in truth and fact, as the defendant, PATRICK R. VEREB, then well knew, the claim was false, fictitious and fraudulent because Charles Cubellis was ambulatory and not placed in a stretcher as claimed.
>
> In violation of Title 18, United States Code, Sections 287 and 2. [emphasis added by defendant].

Defendant interprets this language as charging him with a "false statement" as opposed to a "false claim." Defendant maintains that §287 imposes criminal liability solely for false claims and not for false statements.

Section 287 provides:

> Whoever makes or presents to any person or officer in the civil, military or naval services of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such

claim to be false, fictitious, or fraudulent ...

Defendant cites no caselaw in support of his position that this statute does not impose liability for false statements contained in claims submitted to the government. He apparently relies solely on the language of the statute.

We disagree with defendant's interpretation of §287. The statute imposes criminal liability for claims known to be "false, fictitious, or fraudulent." The challenged counts charge defendant with falsely, fictitiously, and fraudulently claiming that various patients were placed in a stretcher and were not ambulatory. Defendant seems to take the position that even if he falsely claimed that a stretcher was used when it was not, the claim itself would not be false if the ambulance transportation was compensable for other reasons. We reject this position. The indictment charges in effect that defendant knowingly made material and fictitious statements for the purpose of obtaining compensation in claims presented to the government. Section 287 applies.

A decision of the Court of Appeals for the Fourth Circuit supports our conclusion that defendant was properly charged. In United States v. Blecker, 657 F.2d 629 (4th Cir. 1981), cert. denied, 454 U.S. 1150 (1982), the defendants were subcontractors who were arguably permitted pursuant to a particular contract proviso to bill the government at certain rates for work done by outside consultants. Rather than rely on this proviso, however, the subcontractors puffed the resumes of these consultants with

false information. The resumes served as a basis for the rates ultimately charged. The court held that the false statements in the resumes constituted a sufficient basis for conviction under §287 even though the subcontractors may have been able to obtain the same compensation had it not puffed the resumes. 657 F.2d at 635. The situation in Blecker is analogous to the present case, where defendant maintains that even if he falsely claimed that a stretcher was used when it was not, he would not be liable under §287 if the claim was compensable for other reasons. The holding in Blecker thus supports our conclusion.

Defendant's second argument appears to be that claims that a patient was ambulatory and that a stretcher was used was immaterial given that other factors could dictate use of an ambulance. Again, the fact that the evidence showed that defendant falsely claimed that a stretcher was used when in fact it was not is sufficient to support a conviction under §287.

Defendant's arguments at §§3, 4, 5, 6, 7, 8, and 9 all raise basically the same argument, that there was insufficient evidence to convict defendant at various counts because defendant was required to carry the various patients by ambulance. Once again, evidence that the defendant knowingly and falsely claimed that a stretcher was used when in fact it was not is sufficient to support each of these guilty verdicts.

Defendant argues at paragraph 8 that there was insufficient evidence as to Counts Thirty-Eight, Thirty-Nine, Forty and Forty-One because a private insurance carrier ultimately paid

defendant a higher amount for these claims that defendant had claimed from Medicare. Defendant contends that no reasonable jury could find that he committed a fraud in order to receive a lesser amount of money from Medicare than he would have received from a private carrier if Medicare rejected the claim. This contention is fallacious. The fact that a person who presents a false claim may receive more money if his fraud fails does not negate the original offense. In any event, defendant did not demonstrate that private insurers always pay claims regardless of whether ambulance transportation is required.

Defendant also argues that he cannot be found guilty of failing to use a stretcher when a stair chair was used. Ample evidence to the contrary was adduced at trial.

Defendant also maintains that we erred in ruling as a matter of law that the false claims charged in the indictment were material as a matter of law. Defendant asserts without support, that the question of materiality is for the jury. As an initial point, it is far from settled that a false claim even need be material to be indictable under §287. See e.g., United States v. Elkin, 731 F.2d 1005 (2d Cir.), cert. denied; 469 U.S. 822 (1984). We will presume, however, that materiality is a necessary element of a §287 offense. Materiality is a question of law and is for the court. See e.g., United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied; 474 U.S. 988 (1985) (holding that question of materiality under 18 U.S.C. §1001, false statements, is for the court).

Defendant also argues that with respect to each of the "oxygen counts," the government failed to produce any affirmative testimony or evidence to meet its burden of proof on the element of criminal intent. Defendant contends that the alleged fact that he administered oxygen on 120 occasions but never billed for these administrations renders insufficient as a matter of law evidence that defendant on various occasions administered oxygen when in fact he did not. As we stated at trial, the fact that defendant may have failed on some occasions to bill for the administration of oxygen does not serve to negate his guilt on other occasions. The evidence at trial was sufficient to support conviction on these counts.

Defendant also argues that there was insufficient evidence to convict him of the "Fombell counts." He maintains that the government's failure to call a particular witness or to explain the absence of this witness resulted in the government failing to meet its burden of proof. Defendant is wrong on this point. The government produced ample evidence to support a conviction on the Fombell counts and was not required to call any particular witness. If defendant believed that the testimony of this witness would have exonerated him, defendant was free to call the witness himself.

Defendant also argues that the "Fombell regulation" as applied in this case is "discriminatory and violates the Equal Protection Clause under the constitution, due process clause and represents cruel and unusual punishment." We find to the

contrary that the regulation is not arbitrary, unreasonably, or discriminatory.

Defendant asserts that his indictment resulted from bad faith and selective prosecution. The evidence which defendant proffers in support of this assertion is that the government knew that he committed 675 errors against himself in which he failed to charge Medicare for work which he performed. Once again, the fact that defendant may have undercharged Medicare on some occasions does not negate the fact that he overcharged on others.

Defendant argues that prescriptions for ambulance service given to him by doctors constituted a sufficient basis for acquittal because his failure to fulfill these prescriptions would subject him to possible malpractice actions. To the contrary, the possibility of a civil action does not excuse the filing of a false claim.

In the "Ammendum to Brief," defendant attacks an instruction which he purports was given to the jury. Defendant quotes from an instruction which we did give to counsel prior to issuing instructions to the jury. This instruction, taken from Sand and Siffert's Modern Federal Jury Instructions, provided that the jury need not find that all of the entries on the claims were false, fictitious, or fraudulent, so long as the jury found that there was one entry which was false, fictitious, or fraudulent. Implicit in this instruction is the assumption that materiality is not a necessary element of a §287 claim. However, this

instruction was not the instruction which we gave to the jury. Rather, we gave the following instruction:

> The question you must focus on is whether the claim in question contained an entry either that oxygen was administered or that a patient was not ambulatory and a stretcher used which you find from the evidence was false, fictitious, or fraudulent. You need not find that all of the entries on the claims were false, fictitious, or fraudulent, so long as you find that the specific entry as to the use of oxygen or that the patient was nonambulatory and a stretcher was used in the counts which charge one or the other of these items was false, fictitious, or fraudulent,

Court Exhibit No. 1, p. 38. This instruction is fully consistent with our discussion of §287 set forth above and does not warrant a new trial.

Defendant makes various other arguments in support of his motion. We have considered all these arguments and reject them. Defendant's motion for judgment of acquittal or in the alternative for a new trial will be denied.

An appropriate order will follow.

_____
Gustave Diamond
Chief Judge

Date: _____

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United States Sentencing Guidelines

§3C1.1

Obstructing or Impeding the Administration of Justice

If the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the investigation, prosecution or sentencing of the instant offense, increase the offense level by 2 levels.

APPENDIX

E

CROSS EXAMINATION BY MR. COHEN:

Q. Miss Daytner, do you mark on a trip sheet something in your own hand to indicate that you personally reviewed it and you agree with its contents?

A. No, I don't.

Q. Do you write on it in any way to indicate that you personally reviewed and you agree with its contents?

A. No, I don't.

Q. And generally when you get a trip sheet from an ambulance company, any ambulance company, you're getting one copy of many copies of a trip sheet that's being prepared. Is that right?

A. That's correct.

Q. There's an original that's made up, there's a copy that goes to you, and there's a copy that's sent in to the state. Is that correct?

A. That's correct.

Q. All right, and on the trip sheets which you're referring to, in general, these ones that are multi copied, did you get such trip sheets from the defendant personally--

A. Yes, I did.

Q. --on trips that he took? And is your testimony basically the ones that he gave to you personally on the trips that he took, those ones that you remember reviewing when you were the head nurse, those were accurate?

A. That's right.

Q. Okay, and do you recall--Well, when a patient was going to go into dialysis treatment, was coming in to dialysis treatment at BMA--You're familiar with BMA?

A. Yes, sir.

Q. Okay. That's located physically near and around the hospital, isn't it?

A. Yes, sir.

Q. When a patient--

MR. HAHALYAK: Your Honor, objection. She dealt with the emergency room, Your Honor. He is now in another department entirely, of which she has not attended there.

THE COURT: Let's see what--The objection is o overruled.

Q. Miss Daytner, the dialysis patients that were going to BMA, were you handed trip sheets from Pat Vereb on them?

A. No, sir.

Q. You were not. Were you handed trip sheets from Pat Vereb's employees on those patients who were going in for dialysis?

A. No, sir.

Q. You weren't. So you're basically talking about your experience with the multi-page trip sheet, the formal one that's filed with the state. That's what you have limited your testimony to, isn't it? You're not talking about the accuracy of other trip sheets you didn't get, only the accuracy about

the ones that you personally reviewed that came from the defendant that were from the multi copied type.

A. That's correct.

Q. And how long have you known the defendant?

A. Since he started running ambulance.

Q. That would be?

A. Whether it was 1980, '81, I--

Q. Since about 1980 or '81?

A. Whenever r he started.

Q. Okay, and do you know him personally?

A. Yes.

Q. And during the course of the years that you have known him, have there been gifts that have been presented to you and others from him?

A. Would you tell me what you clarify as gifts?

Q. Have you received anything at all from him, other than the trip sheets you have described?

A. Yes.

Q. Tell the jury some of the things you have received.

A. I have received a Christmas card. I have received a pen. I received ice cube trays with the Vereb name on it. I have received some--a box of candy. I have received a dozen roses for Sweetest Day.

Q. Is that on one occasion only?

A. Probably on three or four years. And I was taken to a

dinner in Pittsburgh, and a Christmas gift.

Q. Where was the dinner held, ma'am?

A. At the LeMont.

Q. Was that on one occasion only?

A. No. That was twice.

Q. Is there anything else, ma'am?

A. Not that I can recall.

Q. And who subpoenaed you to come here today?

A. The defendant's attorney.

Q. Did you receive a subpoena from him?

A. Would you tell me what you clarify as gifts?

Q. Have you received anything at all from him, other than the trip sheets you have described?

A. Not from him personally.

Q. Who did you get it from?

(Pause.)

Q. If you can recall.

A. I can't recall her name right now. Cindy.

Q. You don't have any personal knowledge of how the defendant billed insurance companies or Medicare on the trip sheets that he handed to you. Is that right?

A. That's correct.

Q. You would have no idea what he wrote on a bill as to how--what the condition of the patient was or anything else. Is that right?

A. That's correct.

Q. And you would have no knowledge--

MR. HAHALYAK: Your Honor, my direct was on the trip sheet, and not on the claim form. She has nothing to do with the claim form.

THE COURT: That's what counsel is establishing, and I think he has a right to limit testimony of the wittiness to what the witness actually testified to by asking her these questions.

MR. COHEN: Thank you, Your Honor.

Q. Miss Daytner, in regard to employees of the defendant who worked for him, those who brought in patients to the emergency room, you have no way of knowing how he billed Medicare or other insurance companies for those trips, do you?

Q. Who did you get it from?

A. That's correct.

Q. If you can recall.

A. That's correct.

MR. HAHALYAK: Your Honor, this again is objected to. We--This is improper cross. I respectfully submit that she is testifying and she is restricted purely to the trip sheets. I have not gone in any way, shape or form to the others.

THE COURT: This is proper cross,--

MR. HAHALYAK: All right.

THE COURT: --and bearing on the weight of the testimony and the extent of it.

Q. I would like to show you a trip sheet which I will mark

for identification, with the Clerk's help, Government Exhibit Number 86.

(Government Exhibit 86 was marked for identification.)

MR. COHEN: Thank you. I'm sorry I didn't do this earlier. It just came up.

(Counsel conferred off the record.)

Q. I would like to like to hand you Government's Exhibit for identification Number 86 and ask you to review that. Just read it and see if you recall that particular incident.

(Witness read to herself.)

A. May I get my glasses?

Q. Oh, please. Certainly.

MR. COHEN: With the Court's permission, the witness would like to get her glasses.

THE COURT: Certainly.

(Witness stepped down briefly and returned to stand.)

(Witness to herself.)

(Government Exhibit 87 was marked for identification.)

Q. Miss Daytner, I know you're still reviewing that, but I would like to set another one before you that I have marked for identification Government's Exhibit Number 87, and this may help you refresh your recollection about the trip sheet. So you may want to take a look at that, too, please.

(Witness read to herself.)

Q. Have you had an opportunity, Miss Daytner, to review 86 and 87 for the government for identification purposes?

A. Yes, I have.

Q. Do you recognize 86 to be a trip sheet, a state type form trip sheet?

A. Yes, it is..

Q. Oh, could you keep your voice up, please?

A. Yes, it is..

Q. Thank you. And do you recognize 87 to be some of your internal records from the hospital, one of which has your signature on it?

A. That's correct.

Q. Okay. Do you have a personal recollection of this particular incident?

A. No, I don't.

Q. It only comes from these records then. Is that right?

A. That's right.

Q. Is that your signature that is contained on 87, for the record?

A. Yes, it is..

Q. Okay, and you would have made your signature on that record for what purpose? Why would your signature be there?

A. Because it is a requirement to have a signature on a record of anybody that I take care of.

Q. Of anybody who you take care of?

A. Have taken care of.

Q. Did you take care of that person?

A. Yes, I did.

A JUROR: We cannot hear.

THE COURT: The jurors have indicated they can't hear you.

THE WITNESS: I'm sorry.

THE COURT: If you would move closer to the left hand corner of that witness chair, you will speak into the microphone.

THE WITNESS: Okay.

BY MR. COHEN:

Q. Okay. I asked you if your signature was on Government's Exhibit for identification Number 87.

A. Yes, it is..

Q. And I asked you why it's there.

A. Because it is a requirement that we have a chart with a signature of whoever is taking care of the patient.

Q. And was that patient taken care of then in the emergency room?

A. Yes, she was.

Q. Okay. In what way?

A. She would be taken to an ambulance stretcher and she was from the ambulance stretcher to the emergency room prior. She was examined by the emergency room physician.

Q. What condition was she in when she arrived?

A. The physician has marked that she was DOA.

Q. What does DOA mean?

A. Dead on arrival.

Q. Okay, and what's the patient's name?

A. Murisa Hahn.

Q. And what's the date that she arrived in the emergency room DOA?

A. 5/1--Sorry. 2/11/88.

Q. 2/11/88, and is there a state trip sheet that you got with that?

A. Yes, there is.

Q. And that's Government's Exhibit for identification 86. Correct?

A. Yes, it is..

MR. COHEN: Your Honor, I would ask for the admission of those two documents, 86 and 87, at this time.

THE COURT: They are admitted.

MR. HAHALYAK: No objections, Your Honor.

(Government Exhibits 86 and 87 were admitted.)

Q. What does this trip sheet indicate about Murisa Hahn?

(Witness read to herself.)

Q. Could you read that, what the findings are in the trip sheet?

A. Patient is a 73-year-old female in complete cardiac arrest. Patient has rigor mortis, pooling of blood to lateral

side of body. Patient cold to touch. Past medical history of blood in the stool. On Monday at hospital for tests, barium enema. Patient has cardiac history and fracture of hip with surgery.

Q. As a Registered Nurse, what does pooling of the blood indicate?

A. That means that the blood has all drained to one area of the body.

Q. And that's something that generally happens after the heart has stopped?

A. Usually.

Q. And so there is an indication on the trip sheet that this person was--had expired before the time the paramedics or EMTs arrived there. Is that right?

A. There is that possibility.

MR. HAHALYAK: That is objected to, Your Honor, as calling for an opinion.

THE COURT: Just a minute.

MR. HAHALYAK: That is objected to as calling for an opinion by a physician.

THE WITNESS: That's right.

THE COURT: It seems to me that is more a construction of what the statement on the trip sheet means.

MR. HAHALYAK: All right. I have no objection.

Q. The drivers also indicated that the patient was cold to touch. Is that correct?

(Witness read to herself.)

Q. I think that's in the second line.

A. Yes. Yes.

Q. And they also indicated that the patient has rigor mortis. Is that correct?

A. That's right.

Q. What's your understanding of that word or that term, rigor mortis?

A. It's when the body become stiff.

Q. It's when the body become stiff?

A. Yes.

Q. When?

A. Usually after death.

Q. Do people who are alive get rigor mortis?

A. In my judgment, I have never seen anyone with it.

Q. And you have been a nurse since 1955?

A. That's what I said.

Q Rigor mortis, it is fair to say, is associated with death?

A. That's right.

Q. And when someone is cold to touch, and there is rigor mortis, and there is pooling of the blood, all those are indications of death.

A. That's right.

Q. And in fact, in the emergency room at your hospital, the person was declared,, as you indicated, dead on arrival.

A. That's right.

Q. Now, Miss Daytner, you indicated earlier that you had no knowledge of how the defendant did his billing. Is that correct?

A. That's correct.

Q. And so you did not--You do not know as you sit here now how he billed for this particular trip. Is that right?

A. That's correct.

MR. COHEN: Okay. Thank you. I have no further questions, Your Honor.

REDIRECT EXAMINATION BY MR. HAHALYAK:

Q. Miss Daytner, counsel has stated that the patient was dead on arrival and that he was taken there by ambulance to the hospital for a physician to see him. Must an ambulance driver have the person declared dead by a doctor, and that when he was brought in at that time by ambulance, it was because the law required the ambulance driver not to determine if he was dead, but to have a physician who was competent to do that? Is that right?

A. That's the law in the State of Pennsylvania..

Q. That's the law,--

A. An ambulance attendant--

Q. --law of Pennsylvania, and that's the reason he was taken

times on the telephone, you were never aware of his actual physical condition when your crews were picking him up and dropping him off.

A. I just said yes, sir, to you on another--on the previous question, that--There was two questions there, and I said yes, and I don't want you to think I said yes to both. You asked me if I found out some time in July that I knew he was operating a fruit stand, and I said to you yes there.. That is not correct. I found out in July that he was sitting in a car next to the fruit stand which his girlfriend or his wife was running, but he was not running it. He was sitting in the front seat of a car parked next to the stand. He was not running it. He was not selling things. He was merely sitting in the car.

Q. We have heard about Mr. Cubellis having a car accident when he was driving near the fruit stand, didn't he?

A. I don't think I heard. I don't think I heard about it.

Q. In October of 1989, about the 12th or so?

A. That's right before we quit taking him.

Q. Yes. Did you know at that time that he was in a car accident?

(Witness indicated negatively.)

MR. COHEN: Let me mark this as Government's Exhibit 88 for identification.

(Government Exhibit 88 was marked for identification.)

Q. I will hand you what has been marked Government Exhibit 88 for identification.

MR. HAHALYAK: May I see that, sir?

MR. COHEN: Oh sure.

Q. Can you identify--

MR. COHEN: You have no objection?

MR. HAHALYAK: I have no--I think it's irrelevant, but--I object on that relevancy, Your Honor,--

Q. Would you identify--

MR. HAHALYAK: --to this proceeding. I don't think that it's relevant to this proceeding.

THE COURT: Let's hear what it is first, and we will--

A. This is an Ellwood City Ledger. It's dated Friday, October 13, 1989.

Q. And there's an article in there indicating No One Injured.

A. Yes, sir.

Q. --for a title.

A. It says No One Injured.

Q. And that's an article about an automobile accident that Mr. Cubellis had the day before the date of the newspaper.

A. Do you want me to say yes? Or read it?

Q. Well, I would like you to read it first, and if that's

accurate, then say yes.

A. Okay. The thing says No One Injured. No one was injured. Both cars were driven from the scene following two-car accident.

THE COURT: Just read it to yourself first.

THE WITNESS: Oh.

THE COURT: And then answer the questions.

(Witness read to himself.)

A. I have read it.

Q. Did I accurately describe it? It is a car accident--

A. Yes.

Q. --described in there? Mr. Cubellis was involved in the accident.

A. That's correct.

Q. And it indicates that it occurred the day before, which would have been Thursday, that being a Friday the 13th, 1989 paper.

A. I presume it was the day before.

Q. It so states in the article, doesn't it?

A. It just says Thursday, and the paper is dated Friday, so yes.

Q. Were you aware of that car accident?

A. No, sir.

Q. Never heard about it from any of your crew?

A. No. I don't get the Ledger. The ledger is ten miles away

from where I live.

Q. But you never heard about this from any of your crew?

A. No, sir.

Q. Nobody who works for you ever told you that Chuck was out driving and he got in an automobile accident?

A. No, sir.

Q. Mr. Cubellis ever tell you that?

A. I didn't talk to Mr. Cubellis about that, no, sir.

MR. HAHALYAK: Your Honor, I think this is totally irrelevant, this inquiry. I don't think it has any merit to it. The fact that this gentleman was driving at another time is not the responsibility of the defendant, other than that he went to see him when he first found out the matters, but he didn't--The irrelevance--

THE COURT: He has answered the question that he didn't know about the accident.

MR. HAHALYAK: All right.

Q. With regard to Virginia Miller, you indicated during direct examination that she was a dialysis patient. Is that correct?

A. That is correct.

Q. And you indicated that you personally drove her on occasion. Is that correct?

A. In the beginning, yes. When we first started taking her.

Q. Mr. Vereb, were there any times when your crew to your

knowledge drove Virginia Miller in an ambulance by letting her sit in front of the ambulance, to your knowledge?

A. No, sir.

Q. Is it your testimony now that you did not see personally any of your employees driving an ambulance with Virginia Miller sitting in the front?

A. No, sir.

Q. Isn't it true that there was an occasion where one of your employees was driving her and that she permitted her to get into the front seat of the ambulance, and that you personally watched as the ambulance drove by and saw Virginia Miller in the front seat?

A. No, that's not true.

Q. And isn't it true that when that driver came back to the offices, you commented, "I see Virginia is riding with you in the front, " and the response was, "I couldn't get the back door of the ambulance open, and she likes to ride there anyway." Do you remember that?

A. No, sir.

(Discussion off the record.)

A. Sir, may I add one more line to that?

Q. No. You will have an opportunity on your--

THE COURT: Yes, he may.

A. All ambulances are designed with two double doors, not one double door, in the back. Two double doors. There had been

more than one occasion where a back door just wouldn't open,, and the stretcher can go in and out the side door. There's no reason that somebody would have to be riding in the front seat, when a stretcher can go in and out the side door just as in and out the back door.

Q. But you knew Virginia Miller to want to ride in the front seat, didn't you?

A. No, sir.

Q. She preferred to be taken by car.

A. No, sir.

Q. And you knew that several of your employees drove her by car, didn't you?

A. No, sir.

Q. You never knew that?

A. No, sir.

Q. You didn't instruct your employees to take her by car?

A. No, sir.

Q. Isn't it true that you knew that she preferred to go by car because in a car she was more comfortable?

A. No, sir.

Q. In regard to your business in New Castle, you operated a funeral home and an ambulance company in New Castle. Is that correct?

A. That's correct.

Q. And the operation was basically a joint operation, wasn't

it? In terms of the location of the offices.

A. Not at all times.

Q. What times were they joint?

A. In 1987 to 1988, the ambulance company--1989, the ambulance company grew to be too big. We had the entire basement of one of the funeral homes as ambulance crew quarters, and we had a kitchen down there for them, we had sleeping quarters, we had desks, and the ambulance--the funeral basement home was crew quarters. We had seven ambulances working during the daylight shift, but that would be 14 people working, seven ambulances, and they were always parked in the front of the funeral home.

And at that point I decided to separate everything, because I didn't want people in the community to think that they were laying their Mom and Dad out and that in the upstairs of an ambulance company. So I separated everything around that time and moved the ambulances away from the funeral home establishment.

Q. Now that was in 1989?

A. I don't remember--No. It--It was some time in '88 or the very beginning of '89. I don't remember when.

(Counsel conferred off the record.)

MR. COHEN: I would like to have this marked as Government's Exhibit Number 89 for identification, please, and this one for 90.

(Government Exhibits 89 and 90 were marked for identification.)

(Counsel conferred off the record.)

BY MR. COHEN:

Q. I'm going to hand you what has been marked for identification as Government's Exhibit 90. Can you tell me what that advertisement is? Describe it, please.

A. Yes. This is an advertisement that we put in the New Castle News, and it advertisers our ambulance service, and it has the pictures of our employees.

Q. And several of those employees were witnesses during the course of the trial. Is that right?

A. That's correct.

Q. There's a picture of Barb Cwynar--or Sharon Cwynar on there isn't there?

A. Yes.

Q. And there's a picture of Tom Schibik on there?

A. Yes.

Q. And there's a picture of Deborah Copper?

A. Yes.

Q. And there's a picture of Rick LaVan?

A. Yes.

Q. And there's a picture of Gary Hare?

A. Yes.

MR. COHEN: Okay. I would offer as an exhibit

at this time, Your Honor.

MR. HAHALYAK: No objections, Your Honor.

THE COURT: It is admitted.

(Government Exhibit 90 was admitted.)

Q. Now yesterday you testified, Mr. Vereb, about explaining-- You explained and testified about a trip that was taken by one of your crew with a person who was dead on arrival. Is that right? Murisa Hahn?

A. I know what you're referring to, but I'm not sure that I talked about it.

Q. Do you recall being asked questions by your counsel about how it is appropriate to take a body from a scene and take it to the emergency room?

A. Yes. Somebody who is not pronounced dead yet.

Q. Okay, and that was what you were talking about when you were discussing Murisa Hahn. Is that right?

A. That's correct.

Q. Let me hand you Exhibit 89 for identification for the government. Do you recognize that?

A. Yes, sir.

Q. Okay, and that's a claim form that was sent in relation to that trip that was described yesterday. The person had rigor mortis, had pooling of the blood. Is that correct?

A. That's what--That's what Linda Shea wrote on the trip sheet. Yes.

Q. That's what Linda Shea wrote on the trip sheet?

A. That's correct.

Q. Okay. Do you have some reason to doubt that that's the condition of Murisa Hahn at the time that Linda Shea found her?

A. Yes, sir.

Q. Okay, and did you talk to Deb Copper about that?

A. I don't think so.

Q. Deb Copper signed the trip sheet, didn't she?

A. I don't have the trip sheet in front of me.

Q. Oh, I'm sorry. I don't have that in front of you. Deb Copper was on the trip, wasn't she?

A. Yes.

Q. Did you talk to her about that?

A. I don't--I don't remember talking to her about that.

Q. Can you tell the jury the date?

A. February 11 of '88.

Q. I'm going to hand you Government Exhibit Number 86 for--Well, it has been admitted. Is that the trip sheet that goes with Murisa Hahn?

A. Yes, it is.

Q. Okay. Read the findings of the crew on the trip sheet.

A. Can I answer your last question first? You asked me if Debbie Copper signed this. There's no signatures on it.

Q. And then I said she was on the trip. She is on the trip, isn't she?

A. Yes, but I--

Q. She is listed on the trip sheet. Is that right?

A. Yes.

Q. And could you read now the findings?

A. 73-year-old female in complete cardiac arrest. Patient has rigor mortis, pooling of blood to lateral side of body. Patient cold to touch. Past medical history of blood in stool. Monday at hospital for tests. Barium--Well, it says B enema, but it would stand for barium enema. Patient has a cardiac history and fracture of hip surgery. Patient last known to be alive 9:30 yesterday PM. And in parentheses, niece.

Q. Could you read Box 9 of the claim form for the jury?

A. Yes. There's a black line going down it, so I--I can't read the thing. It says year-old patient in complete cardiac arrest. Paramedic IV, cardiac monitor, oxygen, CPR, movement by stretcher necessary.

Q. There was no IV given that day, according to the trip sheet, was there?

A. No, sir.

Q. In fact, all the description in the claim form is basically inaccurate, because it would lead someone who read it to believe that the person was alive and that there were services performed, life-sustaining services.

A. There are mistakes on Section 9 of the claim form. It's not completely inaccurate, no.

Q. Does the claim form in Box 9 seem to indicate that the person was found alive?

A. No. It says the patient was in complete cardiac arrest. That's basically dead.

Q. What else does it say on that again?

A. It said--And this is the things that I told you there were some problems on it. It said that IV, cardiac monitor, oxygen, and CPR.

Q. Now the claim form indicated that the person was--There was a finding of rigor mortis and there was a finding of pooling of the blood. Of course, the body was cold to the touch, and the--according to the information received, the person had been dead for many hours. Isn't that fair to say about what the claim form indicated?

MR. HAHALYAK: Your Honor, I object to that statement. It doesn't state they have been dead for so many hours. It says when last known, the last person that saw them living, not when they died.

THE COURT: All right. The witness may respond.

A. I don't know if I know the question, sir. Can you repeat it?

Q. Could I have the exhibit, please? Thank you.

MR. COHEN: With the Court's permission, I would like to read over this with the witness while I'm standing here.

THE COURT: Go ahead.

MR. COHEN: Thank you, Your Honor.

Q. This claim form indicates what time for arrival at the scene?

A. 11:30. I'm sorry. Arrived at the scene 11:39.

Q. 11:39, and can you tell whether that's AM or PM?

A. I can't tell. I would presume it's AM. PM, she should be using military time, but Linda didn't always do that.

Q. The claim form in the description in the findings section--

A. This is this is a trip sheet.

Q. I'm sorry. Thank you. Indicates the patient has rigor mortis. Is that correct?

A. That's what the claim--That's what the trip sheet says.

Q. And the trip sheet says that there was pooling of the blood. Is that correct?

A. That's what it says.

Q. To the lateral side of the body. Is that correct?

A. That's what it says.

Q. It says patient is cold to touch. Is that correct?

A. That's correct.

Q. And does any of that that I just read to you, those phrases, appear on the claim form?

A. No, sir.

Q. Did you do the claim form?

A. Yes, sir.

Q. You prepared this?

A. I would--I would presume I did, yes.

Q. Okay, and can you tell the jury why you didn't write the findings of the crew onto the findings section of this claim form?

A. Yes.

Q. Okay.

A. This is one of the calls that we would call a repeat billing, and a repeat billing would be things that are common every single time. Before I mentioned there was lots of repeat billings. Dialysis is repeat billings. Physical therapy would be repeat billings, and radiation treatments would be repeat billings Nothing changes on each of those. We called cardiac arrest--I called cardiac arrest repeat billings. Because on as cardiac arrest, everything is done the same. We work all cardiac arrests the same. I could assume that this cardiac arrest would be run the same as all cardiac arrests.

For example, even if she found this person in this particular state, there are protocols that we have to follow, protocols that she has been taught, protocols that's company policy, protocols that medical command make us do, protocols that the coroner of the county would make you do, any county. When advanced life support ambulance goes to a scene, they have to establish to the best of their knowledge that the person is either living or dead. If they feel beyond a

shadow of a doubt that this person is dead, they're not supposed to transport that patient. They're supposed to call a coroner to the scene.

The hospitals and the coroner do not want patients taken in by ambulance who are obviously dead. If we end up taking a patient to a hospital who could be dead or is obviously dead, but not pronounced dead yet by a doctor, or by the emergency--either by the family doctor, the emergency room doctor or the coroner, they're not dead until they're pronounced dead, unless the coroner or somebody comes out to the house.

On all cardiac arrests we follow the same procedure. This particular one, I would have no reason to believe she didn't follow the same procedure.

For example, this is a payable claim either this way or if she followed procedure. What the claim form--What she should have written in here, and I--The government has copies of all of Linda Shea's trips sheets, and I didn't pull all of hers for any particular reason, but Linda Shea never put everything down that she particularly did. For example, she didn't check off stretcher here, and we know she had to use a stretcher. She didn't sign her name. She didn't put her--an EMT certificate number in. She didn't put her rating in. She didn't put the date--the time in that she arrived at the hospital. She didn't put any of her mileages in. She didn't put when she was back in service. So I could assume that she did what protocol says.

Protocol says, one, you arrive at the house and as fast as you can, because we were called in an emergency situation. Being that we were sent in an emergency situation, this claim form didn't need any of that.

What the claim form could have said and still would have been a very payable claim is, one, the patient was in cardiac arrest; two, the--Oh, first, it was an emergency; second, the patient was in cardiac arrest; third, movement by stretcher. That's all it had to say, and that would have been a payable claim.

Since Linda Shea is on it, she's a paramedic. So she has more duties, more responsibilities, and since you mentioned this yesterday, I went into my files again and I pulled this off of another cardiac arrest. This is what should have been on the back of the trip sheet. It's nothing more than a straight line. That's all that it is. It is dated May 6, 1992. Heart rate, nothing. This should have been on the back of the original trip sheet. There isn't anything here.

Even though this person has all these signs and symptoms of basically being dead, and cardiac arrest, this is a payable claim under Medicare as long as we follow the guidelines. One, we arrived in an emergency; two, we used advanced life support on this person just to even verify whether she's living; and, third, we did the transport to the hospital. I have no reason to assume that that wasn't done just because the trip sheet is

incomplete. Now it is in--it is in error, because the trip sheet doesn't say that, but in reality, that's how the problem occurred.

Second form of problem. This is the wording that we would use on most of our cardiac arrests. What happens is, all of our cardiac arrest trip sheets would be put in a pile, and then either myself or one of my helpers would bill all the cardiac arrests out, and just by protocol they would use that particular wording, because that's what we normally do.

The word "IV" on the claim form, it shouldn't have been. The word "CPR" is on the claim form, it shouldn't have been. But we don't get anything extra for the IV compared to the cardiac monitor. We don't get anything extra for doing CPR. The word "oxygen" is on there and that's a mistake, and I assume responsibility for it, and we got probably $8 for the oxygen out of the whole claim.

Q. You mentioned something about cardiac monitor.

A. Correct.

Q. What's the billing on that?

A. Cardiac monitor, we normally bill 60--or, I'm sorry, we normally bill 50, they approve 35.

Q. And what kind of trips do you do cardiac monitors on?

A. We do cardiac monitors. Our protocol says we should be doing cardiac monitors.

Q. I asked you what you do do, not what protocol says. What

kinds of trips do you use a cardiac monitor on? Is there a label for that type of trip?

A. Are you saying advance life support?

Q. I'm asking you.

A. We use a cardiac monitor on any time a patient is having some type of problem that we need to see what the heart is d doing.

Q. Is an advanced --ALS trip one where you would do a billing for cardiac monitor, if necessary?

A. Yes.

Q. And is that on a BLS trip, cardiac monitor?

A. No. However, there are times when the EMTs would put a monitor on and without a paramedic on there should not have done that, and they'd get reprimanded. At the hospital, if they think they're doing the patient a favor or me a favor by saying, "Doc, I ran a strip on the patient," they would get criticized for doing that, because they're not a paramedic.

Q. I'm talking about in terms of billing, when you bill for a cardiac monitor, that's on an ALS trip, isn't it?

A. It's on an ALS trip.

Q. Mr. Vereb, you indicated in your response that the cardiac arrest cases, the trip sheets, may number many at the time of a billing. Did I understand that correctly?

A. I said there would probably be more than one. It's a repeat billing.

Q. It's a repeat billing, meaning for that person?

A. No.

Q. Or just the type of billing?

A. The type of billing would be repeated.

Q. And there may be many of those done at one time?

A. That's correct.

Q. And they would all reflect similar language, as you indicated, because that was what you did?

A. That's what we normally did on cardiac arrest.

Q. I don't want to know what "we" did. What Mr. Vereb did personally and individually. Did you personally and individually use those words on all your caridac arrests, or most of them?

A. On most of them, not on all of them. If I would have done this one, and it has been testified a number of times that we did our billings in the middle of the night, and there's a chance that I read this trip sheet or didn't particularly read this trip sheet to realize that she didn't give this person oxygen, and I may have billed it out as we routinely billed cardiac arrests out, yes.

Q. So when you put the description in Box 9 of the claim form, what did you put?

A. I put year-old patient in complete cardiac arrest, paramedic IV, cardiac monitor, oxygen, CPR, movement by stretcher necessary

Q. What you're saying is, if I understand you right, that IV wasn't really done, and the trip sheet doesn't show that it was done in this case. Is that correct?

A. I said that.

Q. And cardiac monitor, there's no indication on here, is there, that a cardiac monitor was done, according to the trip sheet.

A. This is where other factors come in.

Q. I just want to ask about this trip sheet, sir, in front of you. That's Government Exhibit Number 86. Is there an indication on this particular document that a cardiac monitor was done?

A. No, sir.

Q. And is there any indication on Government Exhibit Number 86, the trip sheet for Murisa Hahn, that oxygen was given?

A. No, sir.

Q. Is there any indication on the trip sheet that CPR was administered?

A. No, sir.

Q. And you put oxygen, CPR and cardiac monitor on the description in Box 9 that Medicare reads. Is that right? Or whoever reads that?

A. I admitted it was done by mistake, yes.

Q. And you would agree with me that what you described on the

claim form is far different from what actually happened on the trip sheet. Wouldn't you?

A. I would agree with you in the fact that the person did not get an IV, did not get CPR, and did not get oxygen.

Q. And when a person reads--When you, Mr. Vereb, when you read this Box Number 9, don't you get the impression from the description there that all those things were actually done to the person?

A. I would get that impression.

Q. And you say this was a mistake on your part?

A. I would say this is a mistake on somebody's part, most likely mine, but I--

Q. It was done intentionally, as though--

A. But I also said this was a payable claim, and no, it was not done intentionally.

Q. I didn't ask you if it was payable or not, did I, Mr. Vereb?

A. No, sir.

Q. I never asked you that, did I?

A. No, sir.

Q. I'm asking you if this was unintentional on your part.

A. Yes, sir.

Q. You didn't intend to mislead Pennsylvania Blue Shield when you sent that in, did you?

A. Not at all.

Q. Now had you reported on the trip sheet or on the claim form that they simply moved the person to be pronounced dead at the emergency room, would you have been paid for a cardiac monitor?
A. If there was no paramedic on board, we wouldn't even have used a cardiac monitor or billed for it or anything. If there's a paramedic on board we are only to use that cardiac monitor, and I can only assume that the paramedics are doing things right, and I can only assume that she used a cardiac monitor. The trip sheet was turned in incomplete and with everything there is, at least eight or nine things, missing here, and if the other seven things are missing, and one of them is very mandatory, and they're all very mandatory, but if one of them is very mandatory, like a cardiac monitor, she got those, and if I didn't get a phone call from the doctor or nurse or written letter that my paramedics are bringing people in without strips on arrest, I can only assume she did it right, because if we didn't do it right, somebody told us.
Q. Mr. Vereb, I'm a little confused about something in regard to the claim forms and the trip sheets. Correct me if I'm wrong, bud didn't you say that in regard to your preparation of claim forms, that you do your very best to accurately describe what actually occurred on the day in question so that Pennsylvania Blue Shield would not be misled by you?
A. That's correct

Q. And didn't you say that you had to rely on the trip sheet to determine what went on on the particular day?

A. That's correct

Q. And didn't you say that you do not assume without checking it out with the crew that things were done when they don't appear on a trip sheet?

A. I said I would check it out with the crew unless it's so obvious that it had to be done.

Q. And it was obvious to you in this case that it had to be done, that is, the cardiac monitor?

A. Just the cardiac monitor is the only thing I could presume on this one, yes, sir.

Q. And the other things were just an oversight on your part?

A. Yes, sir.

Q. You had to study over that trip sheet in order to prepare that claim form, though, didn't you?

A. No. I think it's the exact opposite. I think this is one that I didn't study over, and that's why those are on the claim form. If I would have looked at it and looked at it again, I would not have done that even by accident.

Q. Mr. Vereb, you introduced into evidence or discussed during the course of your testimony multiple trip sheets for dialysis patients. Is that right? For instance, Virginia Miller. You pulled some trip sheets for Virginia Miller?

A. Yes, sir.

was misled in any way, shape or form. Is that right?

A. That's correct

Q. Except you, before you realized from this special incident that occurred, that you were out on something that the others were taking advantage of. Is that right?

A. That's correct

Q. Now the figure of 70,000, I think, had been presented with regard to this woman. Was that over a period of three or so years?

A. The 70,000, as I would understand it, would be how much we earned for taking her every single time we took her, both emergencies, non-emergencies, trips to Pittsburgh, and dialysis trips.

Q. And was this over a period of years?

A. It would have to be a period of years.

Q. Now did you set those fees?

A. No, sir.

Q. Were they less than what would ordinarily be paid in any business enterprise by Blue Shield or Blue Cross and a private insurance?

A. They could be as much as one third less.

Q. One third less. You don't--You have never tabulated what your insurance was and what your rates were to cover this particular person, so we could put this in the proper perspective?

A. No, sir.

Q. The government put in an exhibit here with regard to a trip sheet with reference to the rigor mortis. Do your remember that one?

A. Yes, I do.

Q. Mention was made there of a chart--of a section for the units as though you were receiving payment for them, that is, this person was dead, so how could this CPR. Was there any charge for that?

A. No, sir.

Q. Was there any charge for the other item that they mentioned with reference to?

A. The IV?

Q. IV.

A. No, sir.

Q. In fact, was this case that he brought up a part of the indictment even?

A. It was not only part of the indictment,--

Q. Now one second. Just answer--

A. No.

Q. Was it a part of this indictment?

A. No.

Q. He brought this outside case in. Tell me, was this even a Medicare case in Pennsylvania?

A. No, sir.

Q. It wasn't. Not even a Medicare case in Pennsylvania. He

showed you this Exhibit 93 of Brent Ash, where you recommended him for employment

A. Yes, sir.

Q. Was that before you fired him?

A. Yes, sir. This is when Brent Ash was working for me. He was working out good at this point, and he wanted a job at the hospital. He finally got what he called his first real job after working with me. It was going to give him benefits, Blue Cross/Blue Shield health, and he needed some type of a recommendation from me. He was not in a fired status. He was still working for me and I think at St. Francis for a while. he and Valerie had a problem together.

Q. I'm just asking--

A. Just a second. Okay? And I don't remember when that occurred. However, he wanted a job at St. Francis Hospital, and I--I felt this was true, he could work there.

Q. You sought to help him?

A. Well, working for St. Francis Hospital and working for me would be two different things, because working for me, he's his own man when he's out in that ambulance, nobody tells him what to do, he's on his own.

Q. But you sought to help him, is what I'm asking.

A. He was getting a job at St. Francis, he would be under constant supervision, and I thought he could work out there..

Q. And this is before the incident that you fired him.

A. Oh, yeah, a long time.

Q. Now the government parades here or sets forth here as an exhibit beautifully yellow and green there on the map. Did anybody tell you about anything like that while you were applying for benefits and so on?

A. No, sir.

Q. Did anybody ever tell you in any books that they have here of anything like that?

A. No, sir.

Q. They tell you now, in the course of this proceeding. Is that it?

A. That's correct.

Q. Would you be able to tell us about the Virginia Miller case, Indictment 28, with respect to the date?

A. Yes. Indictment Number 28. Indictment Number 28 is one of the indictments that I was charged with by the United States, stating, just the bottom of my indictment, that Patrick R. Vereb knew to be false, fictitious and fraudulent, and the defendant made a--presented a claim for $390 for the ambulance transportation for Medicare patient Virginia Miller on March 13 of '89, representing that the ambulance transportation was compensable by Medicare, whereas in fact, as the defendant, Patrick R. Vereb, then well knew, the claim was false, fictitious and fraudulent, because Virginia Miller was ambulatory and not placed on a stretcher, as claimed, and they put the date

A. That's correct.

Q. And the claim form, Medicare says they want every bit of information that's important to making a decision. Is that correct?

A. They want as many factors as I can present to them that would be important.

Q. And did you seek to do this?

A. Yes.

MR. HAHALYAK: That's all.

THE COURT: Anything else?

MR. COHEN: No, Your Honor.

THE COURT: No questions?

MR. HAHALYAK: That's all.

THE COURT: Witness may step down.

THE WITNESS: May I leave my papers up here for now?

THE COURT: Yes.

(Witness stepped down.)

(Defendant conferred with counsel off the record.)

MR. HAHALYAK: Your Honor, at this time we rest.

THE COURT: Defendant rests. Rebuttal?

MR. COHEN: Yes, Your Honor.

THE COURT: All right.

DEBORAH COPPER, GOVERNMENT'S REBUTTAL WITNESS, RECALLED SWORN

MR. HAHALYAK: May we have an offer of proof, Your Honor?

that that becomes necessary.

MR. HAHALYAK: Thank you, Your Honor.

THE COURT: All right.

MR. COHEN: I am prepared to proceed.

THE COURT: All right. Let's proceed. Bring in the jury.

(Pause)

JURY PRESENT

TESTIMONY IN REBUTTAL

Patricia Ann Shoaf,

called as a witness, having been previously duly cautioned and sworn, as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q. Please state your name.

A. Patricia Ann Shoaf.

Q. Mrs. Shoaf, you testified earlier in the course of this trial, didn't you?

A. Yes.

Q. You told us what your position was at Vereb Ambulance.

A. That is correct.

Q. What was that again, please?

A My title was office manager.

Q. I want to direct your attention to a conversation with

care of all of this, LaVan, knew nothing about Medicare billing until the defendant taught him what to do, but Sharon Borne could have done it all. Yes we have this former secretary at Eat 'n Park who never touched a Medicare billing in her life. She goes to work for him and he has nothing to do with it, no advice, no control. Mr. Vereb gives up everything to somebody else.

We also know that his money came from where? From Medicare. That was where he had to make his payroll. We've heard about his money problems. He's told us all about his money problems. Medicare was his biggest source of income. Does that make sense at all that this guy is going to hand over the crucial function of billing to somebody who doesn't know anything about it and not be involved at all with it when it's his primary source of income? I suggest to you that makes no sense and it is not true. It is simply not true.

Just like the letter. There were no mistake. No mistake was made when the word "moved" was put in that letter. You can be sure of that and just as sure that he had personal and direct control over trip sheets and over billing.

Listening to him, listening to him testify, I'm sure it must have come across how knowledgeable this man is, how he can pick apart a trip sheet like you never saw. "This one doesn't have this, this, this, and this. I couldn't rely on it. I can't be blamed for. It's not my fault." This

is the diffused responsibility, delegated duty defense. "It's not me, It's somebody else."

These drivers, Linda Shea, Exhibit 86, the Murisa Hahn trip sheet, "I know her well and I know her trip sheets. Look at all the terrible things missing from the trip sheet." He named so many things missing from the trip sheet. You take a look at the trip sheet. "73-year-old female, complete cardiac arrest. Patient has rigor mortis. Pooling of blood to the lateral side of the body. Patient is cold to the touch."

From this and all the terrible mistakes that his people made on the trip sheets Mr. Vereb explained to you in detail how it's perfectly proper for him to go ahead and bill Medicare for an IV, placing on here that there was a cardiac monitor used and oxygen and CPR. This body was a body, cold, dead, for hours. Can there be any mistake in your mind when you look at this that when he says on here -- and he said he did it. He admitted he wrote the claim and then he went on to explain why it was perfectly okay, but is there any doubt in your mind, using your common sense, that when you as a person read this, there was a paramedic and the person is in complete cardiac arrest, IV, oxygen, CPR -- I mean, you're working on the body. It tells you you're working on the body, but he doesn't want you to see it that way. Somehow, somehow he's going to convince us that black is white and white is black.

and this doesn't really mean what it says. "I typed it here. It doesn't really mean what it says." That's the kind of defense we have because the trip sheet has things missing from it like a time or something else that we can change black into white.

I suggest to you when you use your common sense and you look at something, if it walks like a dog, if it barks like a dog, it is a dog. When he says on these claim forms something is completely different from what's in the trip sheet, don't be fooled. It's false. It's fictitious. This is blatantly false and fictitious.

Anybody who reads this at Blue Shield is going to think this person was worked on. You are going to think that and I am going to think that. Diffused responsibility. "I gave it to somebody else to do. It was somebody else's job. It was Sharon Horne. It was Rick LaVan. I didn't even make the decision about sending my ambulance to be parked for 24 hours a day in Fombell."

What did it take to get him to say that he finally had something to do with that? It was very interesting listening to the responses, wasn't it? It's a simple matter. The ambulance goes down to Fombell. It wasn't his responsibility. It wasn't his idea to get a post office box in Fombell.

You have to believe everything that he says in order

to accept all of this and it makes no sense. You can't accept it all. It's just flat out wrong. Whose idea was it? It wasn't his idea. It was PBS's idea for him to get a post office box in Fombell.

What else did he say? He said the guy was interested in his convenience. "Is this convenient for you, Mr. Vereb?" We're talking about a conversation that took place six, seven years ago and he remembers about this guy asking him about his convenience. What was convenient here was his recollection. That's what's convenient here.

Eventually he fabricated a story, I suggest to you. "It's all darn PBS's fault I got the darn post office box anyway." There was a post office right across the street in Ellwood City. Where was the nearest post office box nearest to your 701 Lawrence Avenue Address?" "Well, right across the street," but now it's all PBS's fault he gets the post office down in Fombell. "I don't want there to be any confusion about the business in New Castle and the business in Fombell."

We had Mr. Anderson come in. This is chronological now. Mr. Anderson and Mr. Householder, if you remember, were called as witnesses and they testified that back in '82 through '84 they did have an ambulance parked down here, but Vereb Ambulance was located in New Castle, they testified. They knew where the company was. They had to have everything in terms of communication, supplies, everything went back to

New Castle. After '84 that was it for them. They didn't have a Vereb ambulance down there after that, which, by the way, had nothing to do with Beaver County or Allegheny County. It had to do with advertising for his offices located back here in New Castle.

Bailey was around at the time and was actually talking with Pat Vereb about why Pat got the post office box in Fombell. He was there. It used to be that Pat used Bailey's address, which was in Beaver County, but an Ellwood City zip code, so it was charged class 3. Pat dropped that like a hot potato. "Hey, I don't want class 3. I want to get the money." In order to get the money he had to move his business down there. He knew that. Who did he tell that to? "I'm supposed to move my business down there. Who did he mention it to? Did Copper hear that? Deb Copper? She testified about that. Pat Shoaf testified about that, and LaVan. He directly told people. This was three people. This wasn't one person at one time. There were three different Government witnesses that he had communications with where he said he knew what he was doing was wrong. He knew it. He knew he wasn't supposed to have claimed that his offices had moved to Fombell to get the $111,000, almost 112. He told these people that directly. That is evidence for you to consider as to state of mind. It didn't come from him. It didn't come from him in this trial.

It was totally denied in this trial.

Who had something at stake here? Did Deb Copper have something at stake to come here and testify? Pat Shoaf, did she have something at stake, some reason? No. They didn't have anything at stake. A person here who had to lie about that and the only person here, of course, is the defendant. He has to lie about that because if he doesn't lie about that he's admitting a crime. He's admitting this scheme. He knew what he was doing and he did it for that reason and he misled Pennsylvania Blue Shield.

When you see in the jury room the exhibits you are going to notice that on the claim forms he wrote Fombell for his address for all these things. He openly and notoriously drove his ambulances around everywhere, advertised on them that he's from New Castle. He let everybody know where he is. He wanted people to know. He took out ads. You will see the ad when you go to deliberate and when you look at some of the pictures. You will remember some of the Government witnesses, but he didn't do that with PBS. They're the only ones that didn't know. He didn't want them to know because if they knew that he was still located in Lawrence County he wouldn't have come home with an extra hundred and eleven or twelve thousand dollars. Everybody knew about it but Pennsylvania Blue Shield.

He puts on his claim form that he's now in Fombell,

he's not in Lawrence County, that he somebody parked down in Beaver County after 1986. There's not one bit of testimony about a Vereb ambulance being parked in Beaver County. All of this ended before this scheme in the indictment is charged. All of it ended.

Anderson was done by '84. Householder was done at the same time, within a few months, '84, and Bailey was done early '86. Early '86 he was finished with the defendant.

The defendant started getting his money after that. It was after Bailey left. Even Bailey, as you have heard, was not in charge of class 2, so really after 1984 he had nobody, according to the evidence in the trial, there was absolutely nobody, and that's how it was. He didn't have anybody stationed in Beaver County. All he did was take trips through there. You can take trips anywhere, but that doesn't mean that that's where your business is located in order to get the extra money.

In this case, according to Mr. Vereb, it was everybody else's fault. It was everybody's fault. It was the computer's fault. The computer made terrible errors. The computer is responsible for all of the oxygen counts. You have ten oxygen counts. One of the oxygen counts involves another deceased, another deceased. How do you make a mistake like that?

I suggest to you that in order to accept the defense

that all the oxygen counts were mistakes you must first review Gary Hare's testimony. Gary Hare came in. He had a beard, sort of a round face. His picture is on the paper. He was here early in the trial. He said, "That guy told me to put oxygen down when I didn't give it. He told me he wanted to be able to bill for extra money." Gary Hare was a paramedic. Gary Hare is not working for Noga, doesn't have any axe to grind. He came in here to tell the truth. He was subpoenaed, was required to. He came in and, like Pat Shoaf, did, came in and told things the way they were. The defendant specifically denied that.

If you believe Gary Hare, that he was told by the defendant to do this, write false statements -- "I want you to put false statements on these trip sheets. I want to be able to bill for some of these things. I can bill PBS for it, get a little bit more money" -- if you believe Gary Hare, then you must reject the defendant's argument. What he's saying to you is wrong. What he's saying to you, I suggest to you, is false.

It wasn't just Gary Hare who said that the defendant wanted to bill for oxygen. There were others. There was Rick LaVan. Rick LaVan said the same thing. He said he had conversations with the defendant about it. He brought it to his attention. He said, "I was on some trips with him. 90 percent of my trips were done with the guy and when he did the

billing I noticed he was adding things to it and I called him on it. I said, 'Hey, what are you doing here? I was on that trip with you. There wasn't any oxygen given.'" What did the defendant say? "So what? I'll bill for it anyway."

It's not a small matter, I suggest to you. It's not a small matter. It happens repetitively and it's a false claim. It happens repetitively and it's a false claim. It is a serious matter to lie intentionally on a claim form. It is a crime. I suggest to you that that's what he was doing.

The defendant tells you he didn't threaten, he didn't intimidate, he didn't do those things to Beverly Hall. He didn't do that to Sharon Cwynar. Do you remember Beverly Hall? She talked about a crew meeting. He found out that he was being investigated. He had a crew meeting. She said the words were something to the effect that "I want to let you know that I'm being investigated for Medicare fraud and I want you to know that the Feds" -- which were her words -- "the Feds are going to be asking you questions. They may be asking questions and if you tell them that we let people ride in the jump seat, if you tell them we didn't move them by stretcher, if you tell them about car trips, then your livelihood depends on it. It depends on your answers. I could go to jail if that's what you tell them and I don't want to go to jail.." That's what the defendant told her at a crew meeting. She came and she testified about that.

He suggested it wasn't at all like that. He tried to once again take something and change it into the opposite. "They misinterpreted me. They this, they that." I suggest to you, ladies and gentlemen, Beverly Hall did not misinterpret a word of that. She got that message loudly and clearly from the defendant. No mistake about it.

Sharon Cwynar was subpoenaed to come down to this building to testify in the Grand Jury, the Federal Grand Jury, and up to that point the defendant hadn't been indicted. What did she tell you about his parting words to her before she came down here? She said he said, "Now I haven't been indicted yet. This investigation has been going on for a couple of years, and Sharon, if I get indicted after you testify I'll know it's your fault."

She's his employee. She's working for him. Was that intimidation? I suggest to you it was.

He himself told you, he himself told you yesterday how credible Sharon Cwynar is. He mentioned that in one of his remarks, that Sharon Cwynar wouldn't lie. Sharon Cwynar came in here and did not lie. She was intimidated and intentionally intimidated by him.

I suggest to you that's consciousness of guilt on his part and that he has something to hide and that she is going to hurt him.

In fact, she came in here and testified about trip

sheets, a trip sheet where she did not perform any services for the person other than to walk the person to the ambulance. Sharon Cwynar laid a factual basis for the false claim in an account that she was involved in.

The defendant knew when he was telling Beverly Hall and the crew he wanted them to shut up and he didn't want them to tell the truth and he wanted to intimidate them. It was their job. He did the same thing with her. I suggest to you that's evidence of consciousness of guilt.

When you decide whether he said it or not remember Pat Shoaf on the stand today because her testimony in on one side and his is on the other with the Virginia Miller issue and with other issues. What about Virginia Miller? The defendant knows all about Virginia Miller. How long did it take him to tell us about her details and medical problems? He went on explaining to you in great length, "Virginia Miller, she's one of the time bombs. They can go off at any time. We have to make sure, because of the tremendous medical necessity, that we take them by ambulance. That's what we have to do and we do that and everybody goes by ambulance and that's my rule and that's my policy," and so on and so forth. We heard that from him for two days and he sees Virginia Miller driving down the street in the front seat of the ambulance, laughs about it when the driver comes back. Where's the big policy here? Where's the rule? It's not a policy, it's not a

rule. It's easy money. That's what dialysis patients are, but he didn't want dialysis patients. You heard him tell you that. "I don't want any of those. They're a big pain in the neck." You send somebody out by car and you send in a bill to Medicare. That's not a pain in the neck. That's easy money. That came right out of his log book. You will see the exhibit. Virginia Miller, Exhibits 91 and 92, right out of the log book. "Take my car." That's Rick LaVan said. He testified under oath, "I took that lady by car and he told me to take her by car." The defendant's own log book -- it's admitted into evidence. You'll see it on the first page of Exhibit 85. It's a big long log book that shows a car trip there for Virginia Miller. He was the one who ordered it, the defendant, but he told you he never, ever, ever did that, especially with somebody like Virginia Miller who is a time bomb. "They can go off at any time."

Not only Rick LaVan but Deb Copper was ordered personally told by the defendant, "Go take her. Take her by car." This evidence is in black and white. I suggest that you should accept the Government's version. Deb Copper was telling the truth, Rick LaVan was telling the truth. The defendant's own log book didn't lie about that point. Only the defendant didn't tell the truth about that. He's the one.

Chuck Cubellis. Chuck Cubellis was quite a guy. Chuck Cubellis had his fruit stand. He had his car. What did

the defendant tell you about Chuck Cubellis. "He was very ill. He was ill, but I didn't know about him being anything other than very ill. That's all I knew of him. I didn't know when these bills were sent out" -- the evidence is he sent them out himself -- "I didn't know when the bills were being sent out. The guy was weak, confused, disoriented, too weak, unable to stand, walk without assistance." That's very weak. That's what we heard on direct. We heard about this over and over again. Another time bomb. Always took these people by ambulance and so on and so forth and they were on stretchers.

Then we find out on cross -- it never came out before. After all that direct about Chuck Cubellis -- he spoke with him thirty times, thirty times on the telephone. He sort of blurted that out. I don't know if he meant to blurt it out. I think it came out by accident. He didn't want to have that kind of a close association with this guy. He liked it the way it was on direct. "All I know about him is these terrible trip sheets and I know he's ill, He's really ill."

All of the sudden it comes out that there were thirty telephone calls during the period of the indictment. We're talking about six, seven months. That's a telephone call once a week. He's arguing with him over the phone.

He's sending claims to PBS saying that this guy is deathly ill, almost a vegetable, he can't stand, sit or walk.

You have to put him in a stretcher.

I suggest to you he knew about the fruit stand, the driving, he knew about all that stuff. The only concern the defendant had was that somebody was going to report him, like Noga. Somebody might create a problem for him.

So then he goes to Chuck and he tells Chuck, "I can't be taking you by ambulance when you're at the fruit stand." He tells us Chuck's a bad guy, violating his doctor's orders. He doesn't listen to his own doctor. Here's a guy living out his last days as he wants to, being able to enjoy his fruit stand, his garden, and he has a sense of pride. He wants to be able to go where he wants to go. Pat's out yelling at him, yelling at him because he cares about Chuck, but because he doesn't want Medicare to find out that he's lying on his claim forms. He doesn't want it to be publicly known any more than it already was that Chuck Cubellis is not unable to stand, sit, or walk. He's not moved by stretcher. He doesn't want people to know about that.

If he's interested, if the defendant were interested in this guy, ask yourself, he's on the telephone with this guy thirty times. If he was concerned about misrepresenting something to Medicare, about lying on a claim form, wouldn't he find out a little bit more? Even if he didn't take the trip last week, wouldn't he ask the guy, wouldn't he want to confirm what you see on all the Cubellis claim forms,

about sixteen of them? What you see if the same thing basically over and over again. They found a method that would work. They found something that could fly throw PBS and that's what they wanted. Put that on the claim form. It works. It doesn't have to be true.

Do you recall the questions about a portion of Box 9 dealing with a person's present condition, the description that's supposed to be made on the claim form about how somebody really is when you see them? You know, like when they say "complete cardiac arrest" or whatever. I'm asking Mr. Vereb over and over again, "Tell us about that part." That's where the lie is, ladies and gentlemen. That's where the falsehood is. Did he readily explain that to you? Did he openly tell you and easily tell you about that part? How many questions had to be asked over and over again to get him to focus on the one thing that hurts him the most about those claim forms?

He loved to talk about past medical history. These people all have been past medical histories. Let me tell you about that, but what about the condition they were in? They may have been ill. They may have been ill and needed hospitalization at different times. In fact, one of the counts in the indictment, Cubellis is taken to the hospital and he's admitted. That's not what Vereb is charged with. It's the return trip that he never made. He charged for a round trip. You

will see that on the claim form. 4/21/89 is the date. You are not going to remember the date, but I'll tell you anyway. It's the count 29. That's in there because the defendant charged PBS for a round trip and there was no round trip. Yes, there was a valid one-way trip and we didn't charge him with that. It was a round trip that he was charged with.

He told you about round trips. That just didn't get on the claim form automatically. It had to be typed on and he did it. The testimony from our witnesses is that he took care of those kinds of things. It was under his tutelage, under his direct control. LaVan worked with him in the same room and LaVan, not having experience, had to rely on him.

We had Peggy Morey. You may remember her because it was one of the few times when Judge Diamond asked questions directly of a witness. He wanted to clarify a point. This woman who hadn't passed the exam -- you may remember her very self-consciously admitting to all of us that she was unable to pass a written exam on EMT training. That's the person. I'm sure you all remember her. What was the issue? Did she ever take Cubellis in a stretcher? No, she never did. Sometimes she wrote she did, but he's not charged with any of those, ladies and gentlemen.

Don't be confused. Peggy Morey's trip sheets, and you will see them because they're in evidence, none of them indicate stretcher. Her clear testimony was that if she used

one she would have written it down and the ones that were shown her by the defense support the Government's position. If she used on she wrote it down. If she didn't use it she didn't.

What was she doing? Ladies and gentlemen of the jury, I suggest to you that because of her position without being a certified EMT, that in order to have a job, knowing that the defendant needed to have billable things on the claim form, she may have added that to the ones that she was asked about, I don't know, but I know one thing. Her testimony was clear in regard to the counts in the indictment. She never used a stretcher and that's the first step in the first claim. We have got to show that the claimed service rendered was not rendered.

Erma Horrell. He tells you he doesn't know much about stairchair billing. I don't know if that makes much difference or not, but he told Deb Copper he knew that. He told Deb Copper he didn't want it on claim forms. I suggest to you she, as opposed to him, was telling the truth. He didn't want stairchair on there because he knew there was a problem for billing As long as you put stretcher on there there was no problem. Remember that the people at PBS are processing 53 claims per hour, a little more than a claim per minute. They have to fly through these things, make all the entries, get them out of there and get the next batch on their

desk. He doesn't want a red flag to jump up. Stairchair is one and doctor's office is another. He knew it and he told our witnesses that and they told you that he told them that. That again is black and white.

It's just one way or the other. I suggest to you that our witnesses, Deborah Copper, in particular, on that point -- she went on trips with him herself where he didn't use the stair chair. She told you about that last night. "I went on trips with the guy" -- maybe it was Nene -- it was one of those two. "We didn't use it. We didn't use the stretcher," but the claim form says stretcher. You put that on there so you can get paid and paid quickly.

He tells you it made no difference if the claim was handled manually at PBS. That's not what Kathy McCann explained. You have this repetitive movement of documents going through there and it's great as long as it's going through the computer system. It gets processed in the mainframe computer, kicks out a check for you and everything is okay, but when you have to handle it, when it gets flagged as a pending claim, a problem claim, you're talking about weeks, maybe months before you get paid. Mr. Vereb even told you that. He didn't want you to think that he would put something down like that on a claim form to get his money fast, but he told the witnesses that. He told them. He told Deborah Copper.

I suggest to you, ladies and gentlemen of the jury,

there was never a time in that business that the defendant wasn't in total control of it. I suggest to you there was never a time when he was not personally handling the important business of billing, creating the words that went down on claim forms. You will see the differences when you look through them. They're astounding, just like the last one I showed you today on Murisa Hahn.

I suggest to you he knew quite well what he was doing when he told PBS that he had moved his business. There was a clear intent to commit a crime, to do something that he knew he wasn't allowed to do. I suggest to you that none of the defense exhibits, the paper, the piles of paper that are offered to show that he didn't have criminal intent mean very much at all. They mean absolutely nothing in this case.

A person can walk by five banks, not rob them, and rob the sixth. Does the evidence that they didn't rob five show that they didn't specifically rob the sixth? The answer is no. Means nothing. Totally irrelevant.

That's what we have here. We have here a situation where he's saying, "This is a money case. They owe me more than I owe them." That's not the issue.

The Judge is not going to charge you as he would in a civil case. This is a criminal case. He had to intend to write false claims and when you look at the trip sheets he personally handled and the claim forms he personally handled

People who have illnesses and injuries may love to go by ambulance. It might be great. Anybody who's ever had shortness of breath, a heart attack, should go by ambulance. Great. Let them do it, but Medicare doesn't pay for it. What Medicare wants to know on that claim is for what condition was that person in on the day they picked them up. They want to know the past medical history. That's fine. Nobody challenged that. We didn't say he lied about a person's past medical history. we said the claim is false because he totally misrepresented the condition of the patient on the day that he got them on many of these claims, on the dialysis claims. That's where the falsehood was. That's the part I cross-examined him on. That's what I tried to get him to say, tell us about that part of the claim. You saw how he ran from that issue.

Medicare didn't require that he write anything on there except the truth. It's ridiculous to assert that it's Medicare's fault that the defendant chose words and put them on a piece of paper. He could take anybody he wants in his ambulance anytime he wants. He has the responsibility to report honestly here what the condition was of the patient on the day in question. That's the key. Don't get confused by other things. If he tells about the past medical history, fine, but was Chuck Cubellis unable to stand, sit or walk time after time when these people came out here and told you that he walked right out there?

The medical files that we introduced into evidence are for one purpose. The purpose is to corroborate the driver's testimony. The driver said that a person was in such and such a condition. Medical testimony corroborated that. That's why those medical reports were here.

Mr. Ramsey was not obligated to do anything more with medical records other than to determine as a criminal investigator was it true or was it false. Was the claim true or was it false? He was not there trying to figure out money differences between what Mr. Vereb might have done years ago or weeks ago or any other time. He wanted to find out if these claims were false, so he sought medical reports to see if they'd corroborate the claims. We brought medical records to you to show that the drivers who came to you were telling the truth when they came to you.

The defendant has the ability to bring people to court through subpoenas just the way the Government does. The defendant could have brought in anybody he wanted to. If this witness was so crucial and so important he could have brought him here to tell you what he wanted him to tell you.

During the period of the fraud there was never once a stationed 24-hour-a-day ambulance in Beaver County. That's what the testimony is. It's uncontroverted.

The people who worked in the early years were finished

before '86. Bailey was finished the beginning of '86, so to tell you that there was even a branch office is a falsehood. That's not what it was. Yes, they drove through the area, but that doesn't mean he moved his offices to Fombell. He never moved his offices anywhere. He didn't even have an ambulance stationed there at all during the period of the indictment.

Let's talk about Mrs. Daytner. Did you see how quiet Mrs. Daytner got after she started to look at the document I handed to her? Her voice lowered to a whisper. You could hardly hear what she was saying. What was in her hands? The documents introduced into evidence. What's the first time she saw the bill that the defendant filed for that dead body that was brought into the emergency room.

There's an argument that Pennsylvania Blue Shield, that Medicare somehow requires the defendant to put certain things on here. You heard a lot of testimony about the reliance on the good faith of a provider, on his honesty, that these people who keypunch the information in are not trained investigators, they are not policemen in any way, shape or form. These people are just there to take at face value what it is that's put on the claim form. They have to just accept it that way. They are not able to investigate it.

Pennsylvania Blue Shield cannot process trip sheets. That's not their job. They made a form, a proper form and

it's used all over the country where providers do honestly report exactly what they're supposed to report, the condition of the patient on the day, and when those are compensable the providers are paid. It's ludicrous to suggest that it's Pennsylvania Blue Shield's fault in some way so that the defendant chose to put false statements on the form that they, in return relied on because they have no other choice.

The confusion between stairchair and stretcher, there's none when it comes to billing. Mr. Vereb knew what the difference was in billing. We could talk about definitions for a lot of time, but when we talk about it in the context of a bill that's being sent to be paid, then there's a difference and he knew that difference.

There was no giant conspiracy, ladies and gentlemen of the jury. All of the government witnesses who came up here, according to the defendant, were part of a giant conspiracy to stab him in the back, to lie, to make things up, Pat Shoaf included, Deb Copper included.

You weigh the testimony of Deb Copper when she spoke to you yesterday afternoon. She had nothing to gain , nothing to lose. She's a person who did her best to answer the questions honestly. It was not comfortable for her to come to a courtroom. She's unfamiliar with these surroundings, but she was subpoenaed and she had to be here, so she did what she had to do. She answered the questions as honestly as she could.

Pat Shoaf, you heard again today. Is this a person who's part of a vicious conspiracy? Is this someone who is making things up and lying? That's what the defendant would have you believe. She's lying about telling you about Virginia Miller. She's lying when she spoke about Rick LaVan. I suggest to you that is not so. There is no giant conspiracy.

There's one thing that we agree with Mr. Hahalyak about, that Mrs. Shoaf knows the true nature of the defendant, just as Mr. Hahalyak said. She knows it and she told you the true nature of the defendant.

Thank you.

THE COURT: Members of the jury, you have now, of course, heard all of the evidence. You've heard the closing arguments of counsel. You have yet to hear the instructions of the Court on the law. it's ten minutes to 1. Your lunch is upstairs in the jury room. We will recess at this time so that we can all have lunch and get a break.

Do not, however, at this point discuss any aspect of this case during the lunch period. You must still keep your minds open and must not discuss the case until you have heard the instructions of the Court on the law and you actually retire and deliberate on a verdict. We are going to try to do lunch in 40 minutes instead of an hour today. If when we come up for you in 40 minutes somebody hasn't finished, let us know and we'll give you more time. We'll try to save a few minutes